

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No. 2021-1158
	:	
Appellee,	:	On Jurisdictional Appeal from the Ashland County
	:	Court of Appeals, Fifth Appellate District
-- vs --	:	
	:	Court of Appeals No. 20-COA-015
TYLER MORRIS aka	:	
TYLER MULLINS	:	
	:	
Appellee.	:	

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MERIT BRIEF  
OF APPELLANT, TYLER MORRIS AKA TYLER MULLINS

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A trial court that sentences a defendant to life in prison, for an offense committed when the defendant was a juvenile, violates Article I, Section 9 of the Ohio Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution, when the trial court fails to consider the defendant’s youth as a factor in sentencing.

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## STATEMENT OF FACTS AND CASE

This is a felony criminal case originally brought in the Ashland County Juvenile Court. On June 12, 2019, Appellant, Tyler Morris, aka Tyler Mullins (“Morris”)<sup>1</sup>, date of birth 4/26/2002, was charged by Complaint in the Ashland County Juvenile Court. The Complaint alleged Morris to be delinquent, charging him with Complicity to Aggravated Murder with a firearm specification, Complicity to Aggravated Burglary, and Complicity to Attempted Aggravated Murder with a firearm specification. Bindover Hearing Transcript, p. 4. Because Morris was subject to mandatory bindover, pursuant to R.C. 2152.10, the case was bound over to the Ashland County Court of Common Pleas.

The charges in this case stemmed from a dispute between Morris and the victims, Timothy J. Maust (“Maust”) and Elizabeth Bunnell (“Bunnell”), to whom he had sold methamphetamine. Morris’s codefendant, Michael Watson (“Watson”), testified that “a few months” prior to the incident, Maust and Bunnell owed Morris \$50 for methamphetamine they had purchased from him. Trial Transcript, p. 749. Morris sent Watson, along with some mutual acquaintances, to Maust and Bunnell’s motel room to get either the drugs or the money back. Trial Transcript, pp. 749, 796. Morris was acting based on his supplier telling him to “go get my drugs back or go get my money.” Trial Transcript, p. 750.

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<sup>1</sup> Appellant has since had his name legally changed to Tyler A. Mullins. However, Appellant is referred to as “Morris” for purposes of this Brief since this is the name used at the time of trial, in the transcript, and in proceedings before the Fifth District Court of Appeals.

Morris' acquaintances made three trips to Maust and Bunnell's room. The first time Watson and the acquaintances approached Maust and Bunnell's room, they left, and the second time, a group of people came out of Maust and Bunnell's room and chased them away. Trial Transcript, pp. 617, 752. Morris did not accompany Watson, or the other men, to the room. Trial Transcript, p. 619.

Prior to the third trip to Maust and Bunnell's room, during which the shooting took place, Watson testified that Morris gave him his gun, a .22 caliber Ruger pistol, and told Watson to "shoot at least four times." Trial Transcript, p. 777. However, he testified that the plan was merely to "scare" Maust and Bunnell into giving them the drugs back. Trial Transcript, p. 753. Morris did not tell Watson who to shoot or how the shots were to be directed. Trial Transcript, p. 800. Watson testified that Morris had directed him, earlier that day, to use the gun to scare Maust and Bunnell, but that he did not tell Watson to shoot at them directly. Trial Transcript, p. 774. According to Watson, Morris did not specifically direct him to shoot at Maust and Bunnell; Watson testified that he only "had that general idea" that Morris wanted him to shoot them. Trial Transcript, p. 807.

When Watson and the other men arrived at Maust and Bunnell's room, Watson kicked in the door. Trial Transcript, p. 778. He testified that there was a brief exchange, where Bunnell asked him "are you ready to get your ass beat" and where Watson replied "are you ready to get shot," then Watson began shooting. *Id.* Watson fired a total of six shots into the room. Trial Transcript, pp. 778, 781. The shots struck Bunnell in the neck, injuring her, and struck Maust in the head and chest, killing him. *Id.*

As soon as the shots were fired, Watson and his acquaintances fled. Police arrived at the scene at the Almond Tree Inn shortly thereafter and began searching for them.



Following an investigation, Morris was later arrested at his home, having been taken into custody without incident.

Morris was indicted on the following charges on October 10, 2019:

- Two counts of Complicity to Aggravated Murder, each unclassified felonies and violations of R.C. 2923.02 and 2903.01(A), and each containing a firearm specification under R.C. 2941.145;
- Four counts of Conspiracy to Aggravated Murder, each unclassified felonies and violations of R.C. 2923.01(A)(1) and 2903.01(A) of the Ohio Revised Code, and each containing a firearm specification under R.C. 2941.145;
- One count of Complicity to Aggravated Burglary, a first-degree felony and violation of R.C. 2923.03(A)(2) and 2911.11(A)(2), and containing a firearm specification under R.C. 2941.145;
- One count of Complicity to Aggravated Robbery, a first-degree felony and violation of R.C. 2923.03(A)(2) and 2911.01(A)(1), and containing a firearm specification under R.C. 2941.145;
- Two counts of Complicity to Attempted Aggravated Murder, both first-degree felonies and violations of R.C. 2923.03(A)(2), 2923.02(A) and 2903.01(A) and (B), respectively, and each containing a firearm specification under R.C. 2941.145;
- One count of Aggravated Trafficking in Drugs, a fourth-degree felony and violation of R.C. 2925.03(A)(1); and

- One count of Unlawful Transaction in Weapons, a fourth-degree felony and violation of R.C. 2923.20(A)(1); and one count of Improperly Furnishing Firearms to a Minor, a fifth-degree felony and violation of R.C. 2923.21(A)(3).

Appendix D, Indictment, Case No. 19-CRI-218, October 10, 2019. On February 26, 2020, the State moved to amend the Indictment by amending the dates in Counts One through Ten, and Counts Twelve and Thirteen, from “on or about the period between June 10, 2019 and June 11, 2019,” to read “on or about the period between June 9, 2019 and June 11, 2019,” and by amending the date in Count Eleven to read “June 9, 2019.” On February 28, 2020, the State’s Motion was granted. Appendix E, Judgment Entry, Case No. 19-CRI-218, February 28, 2020. Because Morris’s date of birth, listed in the Indictment, is April 26, 2002, Morris was under 18 years old and, therefore, a minor at the time of the alleged offenses, both under the original and amended versions of the Indictment. Appendix D, Indictment, Case No. 19-CRI-218, October 10, 2019, p. 1; Appendix E, Judgment Entry, Case No. 19-CRI-218, February 28, 2020.

The case proceeded to jury trial on March 2, 2020. On March 6, 2020, the jury found Morris guilty of Counts One and Two, and Seven through Thirteen, of the Indictment, along with the firearm specifications thereon. Morris was acquitted on Counts Three through Six of the Indictment.

Morris’s sentencing hearing took place on April 20, 2020. The State elected to proceed on Counts One, Eight, Nine, and Twelve, along with the single firearm specification, with the remaining counts merged. Transcript of Sentencing, April 20, 2020, p. 11. On April 24, 2020, following the sentencing hearing, the trial court sentenced Morris as follows:

- On Count One, to life in prison with parole eligibility after 25 years;
- On Count Eight, to an indefinite sentence of 6 to 9 years in prison;
- On Count Nine, to an indefinite sentence of 10 to 15 years in prison;
- On Count Eleven, to 9 months in prison;
- On Count Twelve, to 9 months in prison;
- On the firearm specification to Count One, to 3 years in prison.

Appendix C, Judgment Entry-Sentencing, April 24, 2020, Case No. 19-CRI-218, at C-5-C-6. The trial court ordered the sentences on Counts One and Nine, and the firearm specification, to be served consecutively to one another and concurrently to the sentences on Counts Eight, Eleven, and Twelve. Morris's total sentence was life in prison with parole eligibility after 38 to 43 years; the trial court credited Morris with 314 days served. Appendix C, Judgment Entry-Sentencing, April 24, 2020, Case No. 19-CRI-218, at C-7.

Morris timely filed his Notice of Appeal to the Fifth District Court of Appeals on May 11, 2020. On August 2, 2021, the Fifth District Court of Appeals affirmed Morris's convictions and sentence. Appendix B, Opinion and Judgment Entry, Case No. 20-COA-015, August 2, 2021, at B-1, B-27-B-28. On September 16, 2021, Morris timely filed his Notice of Appeal to this Court, along with a Memorandum in Support of Jurisdiction, seeking review on two propositions of law. On December 14, 2021, this Court accepted Morris's appeal for review as to his second proposition of law.<sup>2</sup>

#### ARGUMENT REGARDING PROPOSITION OF LAW

##### Proposition of Law No. I:

A trial court that sentences a defendant to life in prison, for an offense committed when the defendant was a juvenile, violates Article I, Section 9 of the Ohio Constitution, and the Eighth and Fourteenth Amendments to

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<sup>2</sup> For purposes of this Merit Brief, Morris's Proposition of Law II is referred to as Proposition of Law I.

the United States Constitution, when the trial court fails to consider the defendant's youth as a factor in sentencing.

R.C. 2953.08(D)(3) provides that "A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section." However, this Court has also held that "R.C. 2953.08(D) does not preclude an appeal of a sentence for aggravated murder or murder that is based on constitutional grounds." *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803, ¶ 22; see also *State ex rel. Romine v. McIntosh*, 162 Ohio St.3d 501, 2020-Ohio-6826, 165 N.E.3d 1262, ¶ 16.

The Eighth Amendment to the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., Amend. VIII. Similarly, Article I, Section 9 of the Ohio Constitution, which mirrors the language of the Eighth Amendment, provides, in pertinent part, that "Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted." Ohio Const., Art. I, § 9. The Eighth Amendment's protection against cruel and unusual punishment has been applied to the states via the Fourteenth Amendment. U.S. Const., Amend. XIV; see also *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

Both this Court, and the United States Supreme Court, have recognized that youth is a factor that courts must consider in sentencing. "An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham v. Florida*, 560 U.S. 48, 76, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). "[C]hildren are constitutionally different from adults in their level of culpability." *Montgomery v. Louisiana*, 577 U.S. 190, 213, 136

S.Ct. 718, 193 L.Ed.2d 599 (2016), citing *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), *Graham*, supra, and *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

“The United States Supreme Court ‘has repeatedly noted to us that minors are less mature and responsible than adults, that they are lacking in experience, perspective, and judgment, and that they are more vulnerable and susceptible to the pressures of peers than adults.’” *Patrick*, supra, at ¶ 27, citing *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890, ¶ 33. This Court has noted that these characteristics of minors “are characteristics *inherent to juveniles in all cases*,” and are not present merely in those cases involving a constitutional issue. *Patrick*, supra, at ¶ 27 (emphasis added), citing *Miller*, supra, at 473 (noting that “[t]hese features are evident in the same way, and to the same degree, when . . . a botched robbery turns into a killing”). The Court has also recognized the consideration of a person’s age, or youth, in other contexts. For example, the Court has held that a thirteen-year-old’s age would be a factor in how a “reasonable person” in their position would perceive police questioning, and when they would feel free to leave, for purposes of determining whether the person was “in custody” for Miranda purposes. See *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011).

The United States Supreme Court has adopted categorical rules with respect to whether a sentencing practice constitutes cruel and unusual punishment. In particular, in *Graham*, the Court applied this “categorical approach” to reviewing a sentence of life without parole, for a juvenile offender, on Eighth Amendment grounds. See *Graham*, supra, at 61-62. “In the cases adopting categorical rules the Court has taken the following

approach. The Court first considers ‘objective indicia of society’s standards, as expressed in legislative enactments and state practice,’ to determine whether there is a national consensus against the sentencing practice at issue.” *Graham*, supra, at 61, citing *Roper*, supra, at 563.

The “objective indicia of society’s standards,” as the Court described in *Graham*, supra, weigh in favor of considering a juvenile defendant’s youth in imposing a sentence of life in prison. As of May 2021, only half the states—25 in all—allow courts to sentence juvenile offenders to life without parole. The Sentencing Project, *Juvenile Life Without Parole: An Overview* (May 24, 2021), <https://www.sentencingproject.org/publications/juvenile-life-without-parole> (“*Juvenile Life Without Parole: An Overview*”) (accessed Mar. 12, 2022). Since 2012, 32 states, including Ohio, along with the District of Columbia, have amended their laws for people under 18 convicted of homicide, either by eliminating life without parole for felony murder, rewriting penalties that the United States Supreme Court found in *Graham* to be unconstitutional, or by eliminating life without parole for offenders under 18 altogether. *Id.* The relatively recent timeframe, in approximately the last 10 years, within which these changes have been made at the state level, further shows that societal standards are changing on this issue. The legislative changes have also taken place over several election cycles. This shows that the legislation reflects a general consensus, that life without parole for juvenile offenders is excessive and a violation of constitutional protections against cruel and unusual punishment.

The new laws provide for mandatory minimum sentences, with at least three states—Nevada, Oregon, and West Virginia—providing for mandatory minimums as low as 15 years before a juvenile offender is eligible for parole, and Virginia setting its

mandatory minimum threshold at 20 years. Nevada A.B. 267, 78th Reg. Sess. (Nev. 2015); 2019 Ore. SB 1008 (en. Jul. 22, 2019) (amending O.R.C. 144.397, eff. Jan. 1, 2020); West Virginia H.B. 4210, 81 Leg., 2d Sess. (W.Va. 2014), (enacting W.Va. Code §§ 61-11-23, 62-12-13b); Virginia SB 103, Ch. 529 (appvd. Mar. 31, 2020); *Juvenile Life Without Parole: An Overview* (accessed Mar. 12, 2022); The Appeal, *Political Report: Ohio Will No Longer Sentence Kids to Life Without Parole* (Jan. 13, 2021), <https://theappeal.org/politicalreport/ohio-ends-juvenile-life-without-parole/> (accessed Mar. 12, 2022).

The prior decisions of both the United States Supreme Court, and of this Court in cases such as *Patrick* and *Long*, supra, reflect the philosophical difference between the juvenile and adult criminal justice systems. From its inception, the juvenile criminal justice system has placed a comparatively greater focus on rehabilitation than the adult criminal justice system. The United States Supreme Court has given a lengthy history of the origins of the juvenile justice system, noting that from its inception, the goal of reform was for juvenile offenders “to be ‘treated’ and ‘rehabilitated,’ and the procedures, from apprehension through institutionalization, were to be ‘clinical,’ rather than punitive.” *In re Gault*, 387 U.S. 1, 15-16, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). The Ohio Department of Youth Services notes, on its website, that “The mission of the Ohio Department of Youth Services is to improve Ohio's future by habilitating youth and empowering families and communities. The vision of the agency is a safer Ohio: one youth, one family and one community at a time.” Ohio Department of Youth Services, *Who We Are: Mission and Vision*, <https://dys.ohio.gov/about-us/mission-vision-and-core-values> (accessed Mar. 12, 2022).

Juveniles may be convicted of, and sentenced on, offenses requiring the intervention of the adult criminal justice system. However, for juvenile offenders, such as Morris, courts should remain guided by a philosophy emphasizing rehabilitation, rather than punishment, in sentencing. In *Patrick*, supra, this Court cited the example of “Red,” played by Morgan Freeman, from the movie *The Shawshank Redemption*, as an example of the need for the sentencing court to make an individualized sentencing determination, “before an old man is all that is left.” *Patrick*, supra, at ¶¶ 39-41. The goal of sentencing juvenile offenders should be to allow for the possibility of rehabilitation, to avoid defendants becoming “institutionalized” and unable to become productive members of society once they are released—such as the outcome of “Brooks,” another character from the same movie.

Sentencing an offender to either life without parole, or an indefinite sentence of life in prison with release after 38 to 43 years, as the trial court imposed in this case, is, effectively, a life sentence without the possibility of parole. It prevents Morris from being eligible for parole until he is at least 55 years old. There is no realistic possibility of rehabilitation for Morris when his sentence contains an “earliest” release date well past the threshold of middle age, around the time many people are spending time with their grandchildren and preparing for retirement. As this Court previously noted: “The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society as required by *Graham*, 560 U.S. at [75], 130 S.Ct. at 2030, 176 L.Ed.2d at 845-46.” *State v. Moore*, 149 Ohio St.3d



557, 2016-Ohio-8288, 76 N.E.3d 1127, ¶ 81, citing *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013).

When a sentencing court imposes this type of sentence, without specifically considering the offender’s youth, this is precisely the type of “extreme punishment” that is “grossly disproportionate to the crime” which the United States Supreme Court, and this Court, have proscribed. *Graham*, supra, at 60, citing *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991); see also *Patrick*, supra. This Court in *Moore* cited the Iowa Supreme Court’s decision in *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013), in which the Court wrote:

The spirit of the constitutional mandates of *Miller* and *Graham* instruct that much more is at stake in the sentencing of juveniles than merely making sure that parole is possible. In light of our increased understanding of the decision making of youths, the sentencing process must be tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct. At the core of all of this also lies the profound sense of what a person loses by beginning to serve a lifetime of incarceration as a youth.

*Moore*, supra, at ¶ 80, citing *Ragland*, supra, at 121.

The United States Supreme Court has also held that when considering whether a sentence constitutes cruel and unusual punishment, a court must look to “consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.” *Graham*, supra, at 67, citing *Kennedy v. Louisiana*, 554 U.S. 407, 434, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008). The Eighth Amendment forbids “extreme sentences” that are “grossly disproportionate to the crime.” *Graham*, supra, at 60, citing *Harmelin*, supra.

The facts of this case weigh in favor of mitigation. Morris was not the assailant in this case—it was Watson who fired the shots killing Maust and Bunnell. Trial Transcript,

pp. 778, 781. Watson testified that Morris did not tell him to shoot at Maust or Bunnell directly, but instead to “scare” them with the gun. Trial Transcript, p. 774. Watson did not implicate Morris in the shootings, other than identifying him as providing Watson with the gun, even after Watson had made a deal with the State to testify against Morris. Trial Transcript, pp. 777, 788. While this does not provide Morris with a defense to the Complicity to Aggravated Murder charge, it does show the mitigating circumstances present in the case. It also lowers Morris’s level of culpability for purposes of whether Morris’s sentence, and the trial court’s failure to consider Morris’s youth in sentencing, constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution.

Morris also had no prior felony convictions on his record prior to the charges in this case. Prior to this case, Morris’ juvenile record consisted primarily of lower-level, non-violent offenses. Presentence Investigation Report, pp. 62-63. Although Morris had one prior juvenile conviction for Domestic Violence, the remainder of the offenses were non-violent, consisting of charges such as disorderly conduct and possession of marijuana. *Id.* There was also substantial evidence in the record to support the possibility of Morris’s rehabilitation. Morris’s trial counsel, in discussing his strong family support structure, told the trial court that “the family gives him the motivation to rehabilitate himself and to make the best of the rest of Tyler’s life.” Sentencing Transcript, p. 5.

This Court has held that “a trial court must separately consider the youth of a juvenile offender as a mitigating factor before imposing a life sentence under R.C. 2929.03, even if that sentence includes eligibility for parole.” *Patrick*, *supra*, at ¶ 2. Prior to *Patrick*, this Court held that “[a] court, in exercising its discretion under R.C.

2929.03(A), must separately consider the youth of a juvenile offender as a mitigating factor before imposing a sentence of life without parole.” *Long*, supra, at paragraph one of the syllabus. However, as this Court noted in *Patrick*, “The difference between a sentence of life in prison with parole eligibility after a term of years and a sentence of life without the possibility of parole is not material for purposes of an Eighth Amendment challenge by an offender who was a juvenile when he or she committed the offense.” *Patrick*, supra, at ¶ 33. “[T]he severity of a sentence of life in prison on a juvenile offender, even if parole eligibility is part of the life sentence, is analogous to a sentence of life in prison without the possibility of parole for purposes of the Eighth Amendment.” *Patrick*, supra, at ¶ 36.

However, the trial court failed to give separate consideration—or, indeed, *any* consideration—to Morris’s youth as a factor in sentencing. The trial court made no statements regarding Morris’s youth either at his sentencing hearing, or in its sentencing entry. The trial court failed to consider Morris’s youth as a factor even after the State and defense counsel raised the issue of Morris’s age at sentencing. The State’s counsel told the trial court that “but for this Defendant’s age, this is a capitol [sic] offense. The death penalty could be on the table if he was 18.” Sentencing Transcript, p. 14. Morris’s trial counsel argued for a lesser sentence, telling the trial court that “[g]iven Tyler’s age, the fact that he has a small child, daughter . . . I think that he’s capable of rehabilitation, and at one point, hopefully can become a productive member of society.” Sentencing Transcript, p. 5.

The trial court did not consider Morris’s youth as a factor in imposing its sentence. None of the trial court’s statements at Morris’s sentencing hearing mention his

youth, or age. There is also no mention of Morris’s youth in any portion of the trial court’s sentencing entry. The trial court only stated in its sentencing entry that “[t]he Court reviewed the purposes of felony sentencing as set forth in Ohio Revised Code section 2929.11,” and that “the Court has fully considered the provisions of O.R.C. Chapter 2929.” Appendix C, Judgment Entry-Sentencing, Case No. 19-CRI-218, April 24, 2020, at C-2-C-3.

These blanket statements are insufficient to make Morris’s sentence pass constitutional muster. This Court has required that “a trial court must *separately* consider the youth of a juvenile offender” as a mitigating factor prior to imposing a life sentence. *Patrick*, supra, at ¶ 2 (emphasis added). This Court has emphasized the need for a sentence that takes into account the individual and the specific factors underlining the sentence: “Given the high likelihood of the juvenile offender spending his or her life in prison, the need for an individualized sentencing decision that considers the offender’s youth and its attendant characteristics is critical when life without parole is a potential sentence.” *Patrick*, supra, at ¶ 36.

Though Morris’s total sentence was 38 to 43 years to life in prison, as noted earlier, at his young age, being only 17 years old at the time of the offenses, a sentence to life with the possibility of parole after a term of years is indistinguishable, for Eighth Amendment purposes, from a sentence of life without the possibility of parole. See *Patrick*, supra, at ¶ 33. Prior to *Patrick*, this Court recognized that a life sentence, even when it includes presumptive release after a term of years, “is functionally a life sentence” when the time for release “would extend beyond the defendant’s expected lifespan before the possibility of parole.” *Moore*, supra, at ¶ 59.

The Fifth District Court of Appeals overruled Morris’s assignment of error on this issue. Appendix B, Opinion and Judgment Entry, Case No. 21-COA-015, August 2, 2021. However, in an odd juxtaposition, it sustained what was essentially the same assignment of error raised by Michael Watson, Morris’s codefendant, as to *his* 38-years-to-life sentence. *State v. Watson*, 5th Dist. Ashland No. 20-COA-014, 2021-Ohio-1361, ¶ 14. In doing so, the Fifth District stated, “[W]e find Appellant’s sentence is unconstitutional for the reasons set forth in *Patrick*.” *Watson*, supra, at ¶ 10.

The Fifth District’s decision in *Watson*, supra, was issued April 16, 2021. Its decision in this case was dated August 2, 2021. It based its decision in Morris’s case, which is the opposite of its decision in *Watson*, on United States Supreme Court’s decision in *Jones v. Mississippi*, 593 U.S. \_\_\_\_, 141 S.Ct. 1307 (2021). The decision in *Jones* was issued on April 22, 2021, only six days after the Fifth District’s decision in *Watson*. In *Jones*, the Court held that before sentencing a juvenile offender to life without parole, the sentencing court must consider the offender’s “youth and attendant characteristics,” but need not make a specific finding regarding “permanent incorrigibility.” *Jones*, supra, at 1314, citing *Miller* and *Montgomery*, supra. However, the facts in *Jones* are distinguishable from this case, since “permanent incorrigibility” is a term of art that does not appear in Ohio law. Furthermore, *Jones*, like the Court’s prior decisions in *Miller* and *Montgomery*, supra, maintained the requirement that sentencing courts consider “youth and attendant characteristics” as a factor in sentencing—functionally the same requirement this Court has set forth in *Patrick*, supra.

There is also an important distinction to be made between requiring a specific factual finding, and requiring that a trial court separately consider youth as a factor. In

*Jones*, the defendant asked the Court to overturn his sentence based on the lack of a specific factual finding as to “permanent incorrigibility.” *Jones*, supra, at 1313. The Court noted that “[i]n *Jones*’s view, a sentencer who imposes a life-without-parole sentence must *also* either (i) make a separate factual finding of permanent incorrigibility, or (ii) at least provide an on-the-record sentencing explanation with an ‘implicit finding’ of permanent incorrigibility.” *Jones*, supra, at 1313 (emphasis in original) (internal citations omitted).

This Court’s requirement set forth in *Patrick*, supra, which *Morris* is asking this Court to uphold, is far less stringent. *Patrick* requires only that a sentencing court “separately consider” the juvenile offender’s youth as a factor when imposing a sentence of life in prison. Nothing in *Patrick* requires a trial court to make specific factual findings. *Patrick* also does not require a trial court to use specific or “magic” or “talismanic” words in considering an offender’s youth at sentencing, an approach consistent with this Court’s rule, albeit in a different context, regarding the imposition of consecutive sentences under R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 14. The less stringent nature of this Court’s requirement to separately considering youth as a factor in sentencing further underscores the severity of the trial court’s constitutional violation in failing to follow it.

The Court in *Jones* also made clear that states retain the ability to impose additional limits on life sentences for juvenile offenders. “[O]ur holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder.” *Jones*, supra, at 1323. “States may categorically prohibit life without parole for all offenders under 18. *Or States may*

*require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole.*” Jones, supra, at 1323 (emphasis added). Although Morris was not sentenced to life without parole, the language of *Jones* indicates that this Court’s requirement in *Patrick*, supra, that trial courts must separately consider a juvenile offender’s youth when sentencing that offender to life in prison, comports with both state and federal constitutional requirements and United States Supreme Court case law.

The Fifth District’s reliance on *Jones* as the basis for rejecting Morris’s constitutional challenge to his sentence, while sustaining Watson’s assignment of error and ordering his resentencing in a decision issued six days before the decision in *Jones*, was in error. This Court now has an opportunity to correct this miscarriage of justice and to allow Morris to be resentenced in accordance with state and federal constitutional protections and this Court’s decision in *Patrick*, supra.

The trial court’s failure to consider Morris’s youth as a factor in sentencing, and its sentence of Morris to 38 to 43 years to life in prison, is also inconsistent with the statutory changes that have taken place since Morris was sentenced. Am.Sub.S.B. 256 (“Senate Bill 256”), which went into effect April 12, 2021, prohibits sentences of life without parole for offenders who were under 18 years old at the time of the offense. Am.Sub.S.B. No. 256. It amended R.C. 2929.02(A) to read, in pertinent part, as follows: “Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code, except that no person who is not found to have been eighteen years of age or older at the time of the commission of the offense shall be imprisoned for life without parole.” Id. The previous

version of R.C. 2929.02(A) only prohibited the death penalty for those who were under 18 at the time of the offense: “Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death.” R.C. 2929.02(A) (eff. Jan. 1, 2008), amended in Am.Sub.S.B. No. 256.

Senate Bill 256 is retroactive, meaning that Morris will be eligible for parole in 2044, after serving 25 years. However, the trial court’s original sentence, imposed in April 2020 under the prior version of Senate Bill 256, remains. Morris continues to face a sentence of 38 to 43 years to life in prison. Even though he will be eligible for parole sooner due to the retroactivity of Senate Bill 256, as this Court noted in *Patrick*, citing the brief of amici curiae Office of the Ohio Public Defender et al., “Ohio’s parole-release rate was only 10.2 percent between 2011 and 2018.” *Patrick*, supra, at ¶ 33, citing Bischoff, *Ohio Parole Board Under Fire from Victims, Inmates, and Lawmakers*, Dayton Daily News (Apr. 7, 2019), <https://www.daytondailynews.com/news/state—regional-govt-politics/ohioparole-board-under-fire-from-victims-inmates-and-lawmakers/v3iPhe6kmV9wTm8SOxCpzO/> (accessed Nov. 25, 2020). As this Court noted, “In this way, Patrick’s sentence varies little from the state’s harshest punishment for a juvenile offender who is tried as an adult.” *Patrick*, supra, at ¶ 33.

Under his current sentence, Morris will not be presumptively released until at least 2057. If this Court reverses the Fifth District Court of Appeals’ decision and



remands Morris's case to the Ashland County Court of Common Pleas for resentencing, Morris would face a minimum sentence of 23 years to life in prison. This would include 20 years to life in prison on the Complicity to Aggravated Murder charge, under R.C. 2929.03(A)(1)(b) and R.C. 2923.03, and 3 years in prison on the firearm specification attached to the Complicity to Aggravated Murder charge, which the trial court would be required to run consecutively to Morris's sentence for Complicity to Aggravated Murder under R.C. 2941.145.

In resentencing Morris, the trial court could order the sentences on Morris's remaining counts to be served concurrently to his sentence on the Aggravated Murder charge. Even if the trial court elects to impose a lesser aggregate sentence, while still imposing greater than the minimum potential sentence of 23 years to life, this sentence would be more in keeping with the constitutional principles and policy behind Senate Bill 256 and this Court's decision in *Patrick*, supra. It would also be taking into consideration Morris's "youth and attendant characteristics," particularly the fact that he was 17 years old and a minor at the time of the offenses. *Jones*, supra, at 1314; *Patrick*, supra, at ¶ 36.

Because the trial court failed to consider Morris's youth as a factor in sentencing, and because Morris was a minor at the time of the offenses, the trial court's sentence of Morris to life imprisonment constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Ohio Constitution. Consequently, Morris's sentence should be reversed, and his case remanded to the Ashland County Court of Common Pleas for resentencing.

CONCLUSION

For the reasons stated hereinabove, the decision of the Fifth District Court of Appeals is incorrect. Therefore, Appellant respectfully requests that this Honorable Court reverse such decision.

Respectfully submitted,

/s/ *Brian A. Smith*  
BRIAN A. SMITH (0083620)  
Brian A. Smith Law Firm, LLC

COUNSEL FOR APPELLANT, TYLER  
MORRIS AKA TYLER MULLINS

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Merit Brief, including the Appendix hereinafter, was served upon Christopher R. Tunnell, Ashland County Prosecuting Attorney, by electronic mail, at ctunnell@ashlandcounty.org, on this 13th day of March, 2022.

/s/ *Brian A. Smith*  
BRIAN A. SMITH (0083620)  
Brian A. Smith Law Firm, LLC

## APPENDIX

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DEBORAH A. MYERS  
CLERK OF COURTS  
ASHLAND, OHIO

2021 AUG -2 AM 11:55

STATE OF OHIO

Plaintiff-Appellee

-vs-

TYLER A. MORRIS aka  
TYLER MULLINS

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P. J.  
Hon. Patricia A. Delaney, J.  
Hon. Earle E. Wise, Jr., J.

Case No. 20-COA-015

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. 19-CRI-218

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

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Ashland County, Case No. 20-COA-015

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*Wise, John, P. J.*

{¶1} Defendant-appellant Tyler A. Morris appeals his conviction and sentence entered in the Ashland County Common Pleas Court on two counts of Complicity (Aggravated Murder), one count of Complicity (Aggravated Burglary), one count of Complicity (Aggravated Robbery), two counts of Complicity (Attempted, Aggravated Murder), one count of Aggravated Trafficking in Drugs, one count of Unlawful Transaction in Weapons, and one count of Improperly Furnishing Firearms to a Minor, following a jury trial.

{¶2} Appellee is the State of Ohio.

#### **STATEMENT OF THE FACTS AND CASE**

{¶3} On or about June 8, 2019, at approximately 11:00 or 12:00 p.m., Appellant Tyler A. Morris aka Tyler Mullins and his co-defendant Michael Watson, went to the Almond Tree Inn in Ashland, Ohio, to conduct a drug transaction. Appellant Morris took a Ruger .22 firearm with him, which he carried in his bookbag. (T. at 748). While Watson waited outside, Appellant went inside and sold a half of a gram of methamphetamine to Timothy Maust and Elizabeth Bunnell. (T. at 748). Bunnell tasted the methamphetamine and told Appellant that she did not think it was good and shoved Appellant out of the room and slammed the door, without paying for the drugs. *Id.* Appellant called his supplier, Kade Shank, and told him what had happened. Shank responded by telling Appellant to “go get my drugs back or go get my money.” (T. at 750).

{¶4} Three separate trips were made to the Almond Tree to try to collect the money owed to Appellant or to retrieve his drugs.

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{15} The first attempt took place the following day, on June 9, 2019. (T. at 753). Appellant took the gun out of his bookbag, handed it to Watson and told him to “clean it off and go back over there and try to get the drugs back. (T. at 749-50). 751). Appellant then called Timothy Castle and Kareem Thomas to assist with getting the drugs or the money back. (T. at 749). When they arrived, Sammy Castle, Timothy Castle's brother, was with them. (T. at 752). Appellant gave the gun to Kareem and then sent them, along with Watson, back to the Almond Tree Inn to get either the money or the drugs back. (T. at 748-750). Appellant provided methamphetamine to his associates in exchange for them helping him try to get his drugs back. *Id.*

{16} Upon arriving at the Almond Tree, Watson told Maust and Bunnell to “open the door and give the meth back or we are coming in.” (T. 752). Timothy Castle kicked the door to Maust and Bunnell's room a few times and Sammy Castle managed to open the door enough for Watson to see that Bunnell was sitting on the floor in front of the door. (T. at 606, 752). They heard Bunnell on the phone stating that someone was trying to kick in the door, and thinking that she was calling the police, the men fled. (T. at 752).

{17} On the afternoon of June 10, 2019, Appellant met with Watson, Sammy Castle and Gregg Kuzawa and discussed a plan to “go to the Almond Tree Inn and kick in the door and try to get the drugs back.” (T. at 759). Watson testified that if the drugs were not there “[w]e were going to shoot up the house.” *Id.* He stated that he would be the one to do the shooting, using Appellant's Ruger .22. (T. at 760). Watson explained that the men were going to “all have masks” and that they were going to “[l]ike shoot through the door, basically letting them know not to mess with us.” *Id.*

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{¶8} Watson stated that Appellant took the gun out of his waistband and gave it to him and that he put it in a Taco Bell bag. *Id.* He stated that he, Sammy Castle and Kuzawa rode back to the Almond Tree Inn on stolen bicycles. (T. at 763). However, when they arrived at the Almond Tree they were chased away by a friend of Maust, who told them to leave or he would make them leave. (T. at 617, 764). After being chased from the Almond Tree, the men met back up with Appellant, who had waited at a pavilion in the park across the street. (T. at 618-619, 764). At that time, Watson returned the gun to Appellant, and the group went back to Appellant's house and did some methamphetamine. (T. at 766). Among other things, the men again discussed shooting "the house up" if Maust and Bunnell did not have the drugs or the money, and that if the door would not open they would shoot through the door. (T. at 773-774). The men also discussed the issue of collecting the shell casings. *Id.*

{¶9} Watson stated that he went home later that evening and that after his mom left for work, he took a sock and cut a hole in it, with the intention of putting the sock over the gun and collecting the spent casings inside the sock. *Id.*

{¶10} Later in the evening of June 10, 2019, Watson and Sammy Castle again met up with Appellant behind Appellant's house. (T. at 776). Gregg Kuzawa and Gregory Pierce were also with Appellant behind the garage. (T. at 776). Appellant gave the gun back to Watson and told Watson to "shoot at least four times". (T. at 776-777). Watson, along with Kuzawa and Samuel Castle, rode their stolen bicycles back to the Almond Tree. (T. at 777-778). Watson testified that he understood the new plan to be that when he kicked the door, he was to shoot four times. (T. at 777). Watson stated that he had a general idea that Appellant wanted Watson to shoot Maust and Bunnell. (T. at 807).

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{¶11} This time when Watson, Castle and Kuzawa arrived at the Almond Tree, Watson kicked in the door to Maust and Bunnell's room. (T.at 778). Bunnell yelled at Watson "are you ready to get your ass beat", and Watson replied "are you ready to get shot". *Id.* Watson then began shooting, firing a total of six shots, and when the gun jammed, they ran from the room. *Id.* Bunnell was shot on the side neck area. (T. at 631). Maust was shot in the head and chest and died from his injuries. (T. at 781).

{¶12} Watson, Castle and Kuzawa fled the scene of the crime, running across the street to the park where they had left their bikes. (T. at 782). They threw their bikes into a creek, ran through back yards to avoid the police, and went to different houses before returning to Appellant's home. (T. at 784-785).

{¶13} Officers from the Ashland Police Department arrived at the Almond Tree and shortly thereafter began searching for assailants.

{¶14} Appellant Morris was taken into custody as a result of the investigation. After first denying any involvement in Maust's murder and Bunnell's attempted murder, Appellant admitted to the Ashland Police Department that he provided the gun to Watson and that after the shooting, he hid the gun in his room after taking it apart. (T. at 519-533).

{¶15} On June 12, 2019, Appellant Tyler Morris aka Tyler Mullins was charged by Complaint in the Ashland County Juvenile Court, alleging Appellant to be delinquent, and charging him with Complicity to Aggravated Murder with a firearm specification, Complicity to Aggravated Burglary, and Complicity to Attempted Aggravated Murder with a firearm specification. (Bindover Hrng T. at 4). The case was bound over to the Ashland County Court of Common Pleas.



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{¶16} On October 10, 2019, the Ashland County Grand Jury indicted Appellant on the following charges: two counts of Complicity to Aggravated Murder, each unclassified felonies, in violation of R.C. §2923.02 and §2903.01(A), and each containing a firearm specification under R.C. §2941.145; four counts of Conspiracy to Aggravated Murder, each unclassified felonies, in violation of R.C. §2923.01(A)(1) and §2903.01(A), and each containing a firearm specification under R.C. §2941.145; one count of Complicity to Aggravated Burglary, a first-degree felony, in violation of R.C. §2923.03(A)(2) and §2911.11(A)(2), and containing a firearm specification under R.C. §2941.145; one count of Complicity to Aggravated Robbery, a first-degree felony, in violation of R.C. §2923.03(A)(2) and §2911.01(A)(1), and containing a firearm specification under R.C. §2941.145; two counts of Complicity to Attempted Aggravated Murder, both first-degree felonies, in violation of R.C. §2923.03(A)(2), §2923.02(A) and §2903.0a(A) and (B), respectively, and each containing a firearm specification under R.C. §2941.145; one count of Aggravated Trafficking in Drugs, a fourth-degree felony, in violation of R.C. §2925.03(A)(1); one count of Unlawful Transaction in Weapons, a fourth-degree felony, in violation of R.C. §2923.20(A)(1); and one count of Improperly Furnishing Firearms to a Minor, a fifth-degree felony, in violation of R.C. §2923.21(A)(3).

{¶17} On February 26, 2020, the State moved to amend the Indictment by amending the dates in Counts One through Ten, and Counts Twelve and Thirteen, from "on or about the period between June 10, 2019 and June 11, 2019," to read "on or about the period between June 9, 2019 and June 11, 2019," and by amending the date in Count Eleven to read "June 9, 2019."

{¶18} On February 28, 2020, the trial court granted the State's Motion.

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{¶19} The case proceeded to a jury trial on March 2, 2020.

{¶20} On March 6, 2020, following deliberations, the jury found Appellant guilty of Counts One and Two, and Seven through Thirteen, of the Indictment, along with the firearm specifications thereon. The jury acquitted Appellant on Counts Three through Six of the Indictment.

{¶21} At the sentencing hearing on April 20, 2020, the State elected to proceed on Counts One, Eight, Nine, and Twelve, along with the single firearm specification, with the remaining counts merged. (Sent. T. at 11).

{¶22} By Judgment Entry filed April 24, 2020, the trial court sentenced Appellant as follows: on Count One: to life in prison with parole eligibility after 25 years; on Count Eight: to an indefinite sentence of 6 to 9 years in prison; on Count Nine: to an indefinite sentence of 10 to 15 years in prison; on Count Eleven: to 9 months in prison; on Count Twelve: to 9 months in prison; and on the firearm specification to Count One: to 3 years in prison. The trial court ordered that the sentences on Counts One and Nine, and the firearm specification, be served consecutively to one another, and concurrently to the sentences on Counts Eight, Eleven, and Twelve, for a total aggregate sentence of life in prison with parole eligibility after 38 to 43 years. *Id.* The trial court credited Appellant with 314 days served. (Judgment Entry-Sentencing, April 24, 2020).

{¶23} Appellant now appeals, assigning the following errors for review:

**ASSIGNMENTS OF ERROR**

{¶24} "I. APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

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{¶25} "II. APPELLANT'S CONVICTIONS FOR COMPLICITY TO AGGRAVATED MURDER, COMPLICITY TO AGGRAVATED ROBBERY, AND COMPLICITY TO ATTEMPTED AGGRAVATED MURDER WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶26} "III. THE TRIAL COURT'S DECISION TO ALLOW AUTOPSY PHOTOS OF TIMOTHY MAUST WAS AN ABUSE OF DISCRETION.

{¶27} "IV. THE TRIAL COURT'S DECISION TO ALLOW MESSAGES FROM APPELLANT'S GIRLFRIEND, SAIGE MARIE WICKHAM, WAS AN ABUSE OF DISCRETION.

{¶28} "V. R.C. 2953.08(D)(3) IS UNCONSTITUTIONAL BOTH ON ITS FACE, AND AS APPLIED, BECAUSE IT VIOLATES ARTICLE I, SECTION 9 OF THE OHIO CONSTITUTION AND THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

{¶29} "VI. THE TRIAL COURT'S SENTENCE OF APPELLANT TO LIFE IN PRISON WAS IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 9 OF THE OHIO CONSTITUTION, BECAUSE THE TRIAL COURT FAILED TO CONSIDER APPELLANT'S YOUTH AS A FACTOR IN SENTENCING.

{¶30} "VII. THE TRIAL COURT'S SENTENCE OF APPELLANT WAS NOT SUPPORTED BY THE RECORD.

{¶31} "VIII. THE FAILURE OF APPELLANT'S TRIAL COUNSEL TO REQUEST A COMPETENCY EVALUATION OF APPELLANT CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL AND A VIOLATION OF APPELLANT'S RIGHT TO DUE

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PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

I., II.

{¶32} In his first and second assignments of error, Appellant argues that his convictions were against the manifest weight and sufficiency of the evidence. We disagree.

{¶33} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and "in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in evidence the jury 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997–Ohio–52, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983).

{¶34} An appellate court's function when reviewing the sufficiency of the evidence is to determine 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, paragraph two of the syllabus (1991).

{¶35} Appellant is challenging his convictions for Complicity to Aggravated Murder, Complicity to Attempted Aggravated Murder, and Complicity to Aggravated Robbery, which provide:

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**{¶36}** R.C. §2923.03(A)(2) Complicity

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

\*\*\*

(2) Aid or abet another in committing the offense;

**{¶37}** R.C. §2903.01 Aggravated Murder

(A) No person shall purposely, and with prior calculation and design, cause the death of another ...

**{¶38}** R.C. §2923.02 Attempt

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

**{¶39}** R.C. §2911.01(A)(1) Aggravated Robbery

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

**{¶40}** Initially, Appellant argues that his convictions were based on the testimony of his three co-defendants, each of whom had entered into plea agreements which were conditioned on their testimony at Appellant's trial. Appellant argues that his co-defendants

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had an incentive to give testimony that was favorable to the State in exchange for favorable terms in their plea bargains, and that such rendered their testimony not credible.

{¶41} Upon review, we find that co-defendants Kuzawa, Castle and Watson each testified concerning their plea agreements with the State and admitted that they were receiving lesser sentences in exchange for testifying and telling the truth. (T. at 193, 246, 599-601, 788-790). Further, the jury had the opportunity to assess each witness' credibility on the stand and apparently determined they were telling the truth at trial.

{¶42} We defer to the trier of fact as to the weight to be given the evidence and the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), at paragraph one of the syllabus. The jury as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the trier of fact may take note of the inconsistencies and resolve or discount them accordingly \* \* \* such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Johnson*, 5<sup>th</sup> Dist. Stark No. 2014CA00189, 2015-Ohio-3113, ¶61, citing *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 WL 284714 (May 28, 1996). The jury need not believe all of a witness's testimony, but may accept only portions of it as true. *Id.*

{¶43} Any inconsistencies in the evidence were for the trial court to resolve. *State v. Dotson*, 5th Dist. Stark No. 2016CA00199, 2017-Ohio-5565, ¶ 49. "The weight of the evidence concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other." *State v. Delevie*, 5th Dist. Licking No. 18-CA-111, 2019-Ohio-3563, ¶30, appeal not allowed, 158 Ohio St.3d 1410, 2020-Ohio-518, 139 N.E.3d 927, citing *State v. Brindley*, 10th Dist. Franklin No. 01AP-

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926, 2002-Ohio-2425, 2002 WL 1013033, ¶16. In the instant case, Appellee's evidence was compelling, and the jury was free to weigh the evidence accordingly.

{¶44} Appellant next argues the evidence does not demonstrate that he acted with "prior calculation and design" to cause Maust's death. Appellant argues that he only intended to scare or intimidate Maust and Bunnell, not cause, or attempt to cause, their death.

{¶45} At trial, when co-defendant Watson was asked about the plan to scare Bunnell and Maust, he stated "[w]e were supposed to scare them with the gun" and "[p]ull the gun out and put it in their face." (T. at 774). Watson further testified that Appellant told him to fire the gun four times, and that the plan was either to "shoot the place up" or to fire the gun through the door. (T. at 759-760, 800).

{¶46} Upon review, we find that that testimony presented to the jury shows that Appellant was angry at the victims and wanted either his money or the return of his drugs. Appellant instructed his co-defendants to do whatever they had to to get either his money or his drugs and gave co-defendant Watson a gun, telling him to shoot at least four times. We find that the evidence presented to the jury supports a finding that Appellant intended for his co-defendant to shoot the victims.

{¶47} Appellant also argues the evidence does not support his conviction for Complicity to Aggravated Robbery because his co-defendants did not steal anything.

{¶48} Testimony was presented to the jury by the co-defendants that they kicked-in the door to the victims' room with the intent to get the money owed to Appellant or retrieve Appellant's drugs. The act of kicking-in the door, with a deadly weapon, while attempting to commit a theft offense supports the conviction for aggravated robbery.

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{¶149} We find the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that Appellant's convictions be reversed and a new trial ordered. Appellant's convictions are not against the manifest weight or sufficiency of the evidence.

{¶150} Appellant's first and second assignments of error are overruled

### III.

{¶151} In his third assignment of error, Appellant argues that the trial court erred in allowing the autopsy photos to be shown to the jury. We disagree.

{¶152} The admission of photographic evidence is left to the discretion of the trial court. *State v. Maurer*, 15 Ohio St.3d 239, 264, 473 N.E.2d 768, 791 (1984); *State v. Morales*, 32 Ohio St.3d 252, 257, 513 N.E.2d 267, 273 (1987). In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶153} Relevant, non-repetitive photographs, even if gruesome, are admissible if the probative value of each photograph exceeds the prejudicial impact to the accused. *Maurer, supra*, at paragraph seven of the syllabus; *Morales, supra*, at 257.

{¶154} The photographs in question show the victims' wounds caused by the bullets fired from the gun given to co-defendant Watson by Appellant.

{¶155} Here, the trial court, after hearing arguments from each side, excluded two autopsy photographs after determining that such photographs would be prejudicial due to their graphic nature.

{¶156} In overruling Appellant's objections to the rest of the photographs, the trial court, after explaining its reasons for excluding two of the photographs, stated:



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I don't think they are prejudicial in nature, it looks like you are showing a close up of a mosquito bite, nothing shocking or horror or emotions, that results from that clearly seeing someone with their head chopped off would, and the chest open could. And there is a photograph that shows part of the opening in the chest cavity, but I did not think it was having shock and horror. That is my ruling and you can decide if you want to submit that stipulation into the record or not. (T. at 836).

{¶57} Having viewed the photographs, we do not find that the trial court erred in allowing the introduction of the photographs. The trial court carefully considered each of the photographs and found all but two to be more probative than prejudicial. The photographs assisted the State in explaining where the victims were shot and how Maust died.

{¶58} Further, while the admission of multiple photos of the victims' injuries, along with the testimony of the coroner, may have been repetitive under Ohio Evid.R. 403 and 611(A), we find no evidence that introduction of such photos affected the outcome of the trial. Rather, such photographs depicted the fatal wounds caused by the gunshots which led to the death of the victim.

{¶59} The trial court did not abuse its discretion in determining that the probative value of the autopsy photographs outweighed their prejudicial effect.

{¶60} Appellant's third assignment of error is overruled.

#### IV.

{¶61} In his fourth assignment of error, Appellant argues that the trial court erred in allowing text messages from Appellant's girlfriend into evidence. We disagree.

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{¶62} The admission or exclusion of evidence rests in the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, 180, 510 N.E.2d 343. Our task is to look at the totality of the circumstances in the particular case under appeal and determine whether the trial court acted unreasonably, arbitrarily or unconscionably in allowing or excluding the disputed evidence. *State v. Oman* (Feb. 14, 2000), Stark App. No. 1999CA00027.

{¶63} As a general rule, all relevant evidence is admissible. Evid.R. 402. However, under Evid.R. 802, hearsay evidence is not admissible, "except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio."

{¶64} At trial, the State introduced Facebook messages between Appellant and his girlfriend. (T. at 574). Defense counsel acknowledged that Appellant's side of the messages were admissible as statements against interest, however counsel objected as to the girlfriend's statements, arguing that she was not present for cross-examination. (T. at 575). The following text exchanges, which took place between June 11, 2019, and June 14, 2019, were read into evidence:

Wickham: "okay, get rid of the gun, okay, please, I am begging you."

Morris: "Can't."

Wickham: "Well, then stop carrying it please, especially when you have (S.M). All right."

Morris denied carrying the gun around [S.M], to which Wickham texted: "You did yesterday."

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Morris: "Yeah, because I was going to shoot it at my grammies."

Wickham: "Please just stop having it out where people can take pictures of you holding it and F.R. I don't know what that is,"

Morris replied, "OK."

(T. at 578-582).

{¶65} Morris and Wickham then discussed Morris' involvement with selling drugs. Morris asked Wickham if she was "pissed off," and when Wickham asked why, Morris said, "because this bitch ran off with 50 dollars of mine." *Id.*

Wickham: "stop trusting people with your money baby,"

Morris: "I did not give no one my money, baby, they ran off with 50 dollars of my stuff."

Wickham then asked if Morris was "selling," to which he replied that he was, and when Wickham asked him why he was selling, he replied, "Money."

(T. at 583).

{¶66} Appellant's statements were admissible under Evid.R. 801(D)(2)(a), which states, in pertinent part, that "[t]he statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity."

{¶67} We find that Wickham's statements were admitted for the purpose of giving context to Appellant's admissions.

{¶68} Statements of the other individuals on recordings were not hearsay because they were admitted simply to provide context for [Appellant's] statements. *State v. Townsend*, 9th Dist. Summit No. 27316, 2015-Ohio-1124, ¶ 13; *See State v. Brown*, 1st

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Dist. Hamilton No. C-120327, 2013-Ohio-2720, ¶ 25; *State v. Twitty*, 2d Dist. Montgomery No. 18749, 2002-Ohio-5595, ¶ 20-21.

{¶69} The Ohio Supreme Court has recognized that if a statement is not offered for the truth of the matter asserted, it is not prohibited by the hearsay rule and will be admissible, subject to the standards governing relevancy and undue prejudice. *State v. LaMar*, 95 Ohio St.3d 181, 196, 767 N.E.2d 166, 2002-Ohio-2128, citing *State v. Maurer* (1984), 15 Ohio St.3d 239, 262-263, 473 N.E.2d 768. Thus " 'testimony which explains the actions of a witness to whom a statement was directed, such as to explain the witness' activities, is not hearsay.' " *Id.*, quoting *Maurer* at 262.

{¶70} Appellant further argues that even if the text exchanges were admissible, they were unfairly prejudicial.

{¶71} In reaching a decision involving admissibility under Evid.R. 403(A), a trial court must engage in a balancing test to ascertain whether the probative value of the offered evidence outweighs its prejudicial effect. *State v. Hymore*, 9 Ohio St.2d 122, 224 N.E.2d 126 (1967), paragraph seven of the syllabus. In order for the evidence to be deemed inadmissible, its probative value must be minimal and its prejudicial effect great. *State v. Morales*, 32 Ohio St.3d 252, 258, 513 N.E.2d 267 (1987). Furthermore, relevant evidence which is challenged as having probative value that is substantially outweighed by its prejudicial effects "should be viewed in a light most favorable to the proponent of the evidence, maximizing its probative value and minimizing any prejudicial effect" to the party opposing its admission. *State v. Maurer*, 15 Ohio St.3d 239, 265, 473 N.E.2d 768 (1984).

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{¶72} Here, we find that the probative value of text messages was high as they relate to Appellant having the firearm, as well as his feelings about losing \$50.00.

{¶73} Appellant's fourth assignment of error is overruled.

V.

{¶74} In his fifth assignment of error, Appellant argues that R.C. §2953.08(D)(3) is unconstitutional on its face and as applied. We disagree.

{¶75} Appellant's arguments in this case are that R.C. 2953.08 is unconstitutional because it forecloses appellate review of his sentence. However, the Supreme Court of Ohio recently clarified in *State v. Patrick*, Slip Opinion No. 2020-Ohio-6803, that R.C. §2953.08(D)(3) does not preclude an appeal of a sentence for a murder or an aggravated-murder offense that is based on constitutional grounds. *Id.* at ¶ 22. The court explained that R.C. §2953.02 also provides a statutory right to appeal a sentence to the court of appeals. *Id.* at ¶ 16.

{¶76} Here, Appellant's challenges to his sentence are based on constitutional grounds. He is therefore not precluded from appealing his sentence pursuant to R.C. §2953.08(D)(3).

{¶77} "The law is clear that 'courts should avoid reaching constitutional issues if they can decide the case on other grounds.' *DeVan v. Cuyahoga Cty. Bd. of Revision*, 2015-Ohio-4279, 45 N.E.3d 661, ¶ 10 (8th Dist.). Courts should 'not reach constitutional issues unless absolutely necessary.' See *In re D.S.*, 152 Ohio St.3d 109, 2017-Ohio-8289, 93 N.E.3d 937, ¶ 7, quoting *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 9." *Id.* at ¶ 39.

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{¶78} Applying these long-standing principles, we elect not to consider the constitutionality of R.C. §2953.08(D)(3) in this case. Appellant's argument is that R.C. §2953.08 is unconstitutional because it forecloses appellate review of his sentence. However, as set forth above, in *Patrick*, the Supreme Court of Ohio clearly held that R.C. §2953.08(D)(3) does not preclude all appellate review of sentences imposed for murder and aggravated-murder offenses

{¶79} Appellant's fifth assignment of error is overruled.

#### VI.

{¶80} In his sixth assignment of error, Appellant argues that the trial court erred in sentencing Appellant because it failed to consider Appellant's youth as a factor. We disagree.

{¶81} Appellant argues his sentence of life in prison with parole eligibility after thirty-eight to forty-three years is unconstitutional based on the December 22, 2020 decision of the Ohio Supreme Court in *State v. Patrick*, 2020-Ohio-6803. Patrick, who was a juvenile at the time of the offenses, was convicted of aggravated murder, aggravated robbery, and tampering with evidence following a jury trial as an adult. He was sentenced to an aggregate term of incarceration of life with parole eligibility after 33 years. The Ohio Supreme Court held the Eighth Amendment's prohibition on cruel and unusual punishment requires a trial court, before imposing a sentence which includes a possibility of life imprisonment on a juvenile offender, to consider and articulate its consideration of the offender's youth as a mitigating factor when imposing sentence. *Id.* at ¶2. "Given the high likelihood of the juvenile offender spending his or her life in prison, the need for an individualized sentencing decision that considers the offender's youth and

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its attendant characteristics is critical when life without parole is a potential sentence." *Id.* at ¶36. In so holding, the Ohio Supreme Court noted:

We know that a sentence of life without the possibility of parole "forswears altogether the rehabilitative ideal." *Graham*, 560 U.S. at 74, 130 S.Ct. 2011. We also know that the characteristics of youth include diminished culpability and heightened capacity for change. This brings to mind an illustration.

In the movie *The Shawshank Redemption*, the character "Red," portrayed by Morgan Freeman, faces the parole board after having served 40 years of a life sentence and having been previously denied parole twice after serving 20 and 30 years of his sentence. In response to a member of the parole board's question about whether he has been rehabilitated, he responds: "Rehabilitated? Well, now, let *me see*. \* \* \* *What do you really want to know? Am I sorry for what I did?*" Then, he explains:

"There's not a day goes by I don't feel regret. Not because I'm in here, or because you think I should. I look back on the way I was then, a young, stupid kid who committed that terrible crime. I want to talk to him. I want to try to talk some sense in to him, tell him the way things are, but I can't. That kid's long gone, and this old man is all that's left. I got to live with that."

*The Shawshank Redemption* (Castle Rock Entertainment 1994).

Certainly, before imposing a life sentence on a juvenile offender, there is room in our justice system for a trial court to make an individualized

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sentencing determination that articulates its consideration of the offender's youth, and all that comes with it, before an old man is all that is left.

{¶82} *Id.* at ¶¶39-41.

{¶83} In a recent decision filed April 16, 2021, *State v. Watson*, 5th Dist. Ashland No. 20-COA-014, 2021-Ohio-1361, ¶¶ 8-14, this Court considered this same issue as raised by Appellant's co-defendant. This Court held:

In the instant case, the record is devoid of an articulation of consideration of Appellant's youth by the trial court prior to imposing a sentence which included a potential term of life imprisonment. While we recognized the trial court did not have the benefit of the Ohio Supreme Court's decision in *Patrick* at the time sentence was imposed, we find Appellant's sentence is unconstitutional for the reasons set forth in *Patrick*.

\*\*\*

Because the trial court ultimately determines the sentence entered in a particular case, we find the same policy considerations underlying the *Patrick* decision regarding the potential of a juvenile serving a life sentence apply whether the sentence is part of a plea agreement or imposed following trial. We find the constitutional responsibility placed upon the trial court to consider the youth of the offender in mitigation of a potential life sentence and to articulate such consideration on the record is not abrogated simply because the sentence was jointly recommended, particularly in the instant case where *Patrick* had not yet been decided at the time the plea agreement was entered.



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{184} Six days after our decision in *Watson, supra*, on April 22, 2021, the United States Supreme Court decided *Jones v. Mississippi*, 539 U.S. —, —, 141 S.Ct. 1307, 1311, — L.Ed.2d — (2021). In *Jones*, the Court considered a defendant's claim that the sentencing court erred by imposing life with parole eligibility (LWOP) sentences for crimes that the defendant had committed as a minor, because the sentencing court failed to make a factual finding of permanent incorrigibility or, at the very least, an on-the-record explanation of the sentence containing an "implicit finding" of permanent incorrigibility. 141 S.Ct. at 1313. But the United States Supreme Court upheld the sentence, holding that *Miller* does not require a separate factual finding of permanent incorrigibility before a sentencer imposes an LWOP sentence on a murderer under age 18. See *Jones*, 141 S.Ct. at 1314-1319. And the Court rejected Jones's alternative argument that a sentencer must at least make an on-the-record explanation for the sentence that carried an "implicit finding" of permanent incorrigibility, saying that an on-the-record finding is (1) not necessary to ensure that a sentencer considers a defendant's youth, (2) not required by or consistent with *Miller* or the Court's analogous death penalty precedents, and (3) not dictated by any consistent historical or contemporary sentencing practice in the States. See *id.* at 1319-1321. In particular, the Court explained, "if the sentencer has discretion to consider the defendant's youth [as *Miller* requires] ... it would be all but impossible for a sentencer to avoid considering that mitigating factor," especially where defense counsel makes arguments focused on the offender's youth. *Id.* at 1319.

{185} In short, *Jones* clarified that although the Eighth Amendment requires that, before sentencing a juvenile murderer to LWOP, a trial court must hold a sentencing hearing where the defendant's age and characteristics of children are *considered*, neither

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*Miller* nor *Montgomery* requires a sentencer to say anything on the record about youth and its attendant characteristics before imposing an LWOP sentence.

{¶86} Based on the United States Supreme Court decision in *Jones v. Mississippi*, *supra*, we find Appellant's sixth assignment of error not well-taken and deny same.

## VII.

{¶87} In his seventh assignment of error, Appellant argues that his sentence is not supported by the record. We disagree.

{¶88} R.C. §2953.08 governs appeals based on felony sentencing guidelines. Subsection (G)(2) sets forth this Court's standard of review as follows:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

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{¶89} "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶90} A sentence is not clearly and convincingly contrary to law where the trial court "considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes post release control, and sentences the defendant within the permissible statutory range." *State v. Dinka*, 12th Dist. Warren Nos. CA2019-03-022 and CA2019-03-026, 2019-Ohio-4209, ¶ 36.

{¶91} Here, Appellant does not argue that his sentence is contrary to law and we find that Appellant's sentence is within the statutory range.

{¶92} This Court is therefore without authority to disturb Appellant's sentence absent a finding by clear and convincing evidence that the record does not support the trial court's findings under R.C. §2929.11 and R.C. §2929.12.

{¶93} Here, before sentencing Appellant, the trial court heard arguments from Appellant's counsel, considered the pre-sentence investigation report, and listened to the family of the victims. The court considered the fact that Appellant was found guilty of nine felonies, most of which were felonies of violence.

{¶94} Further, in its Judgment Entry filed April 24, 2020, the trial court indicated it reviewed the presentence investigation report and noted it considered "the purposes of felony sentencing as set forth in Ohio Revised Code Section 2929.11," and "fully

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considered the provisions of O.R.C. Chapter 2929, the circumstances of the offense, the information contained in the pre-sentence investigation, and the information furnished by the parties to this case." (JE at 2-3). The trial court stated the following:

Based upon consideration of the purposes and principles of the felony sentencing law, the statutory sentencing factors, and after weighing the above findings, this Court finds that the Defendant is NOT amenable to community control sanctions and that a prison sentence is consistent with the purposes and principles of the felony sentencing law of Ohio and that community control is not required.

{¶95} Upon review, we find the sentence imposed is not clearly and convincingly contrary to law. The sentence is within the statutory range for a felony of the first degree, and the trial court considered the R.C. §2929.11 and §2929.12 factors.

{¶96} The record in this case supports the sentence imposed by the trial court.

{¶97} Appellant's seventh assignment of error is overruled.

#### VIII.

{¶98} In his eighth and final assignment of error, Appellant argues that he received ineffective assistance of counsel. We disagree.

{¶99} A claim of ineffective assistance of counsel requires a two-prong analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to Appellant. The second prong is whether the Appellant was prejudiced by counsel's ineffectiveness. *Lockhart v. Fretwell* (1993), 506 U.S. 364, 113 S.Ct. 838,

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122 L.Ed.2d 180; *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

**{¶100}** In determining whether counsel's representation fell below an objective standard of reasonableness, judicial scrutiny of counsel's performance must be highly deferential. *Bradley*, 42 Ohio St.3d at 142, 538 N.E.2d 373. Because of the difficulties inherent in determining whether effective assistance of counsel was rendered in any given case, a strong presumption exists that counsel's conduct fell within the wide range of reasonable, professional assistance. *Id.*

**{¶101}** In order to warrant a reversal, Appellant must additionally show he was prejudiced by counsel's ineffectiveness. This requires a showing that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Bradley, supra* at syllabus paragraph three. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

**{¶102}** The United States Supreme Court and the Ohio Supreme Court have held a reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Bradley* at 143, 538 N.E.2d 373, quoting *Strickland* at 697. Accordingly, we will direct our attention to the second prong of the *Strickland* test.

**{¶103}** Here, Appellant argues that trial counsel's failure to request a competency evaluation constituted ineffective assistance of counsel.

**{¶104}** In the context of a criminal trial, a trial court's failure to hold a competency hearing does not rise to constitutional proportions unless the record contains sufficient indicia of incompetency. *State v. Bock* (1986), 28 Ohio St.3d 108, 502 N.E.2d 1016.

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According to *Bock*, “[i]ncompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel.” *Id.* at 110, 502 N.E.2d 1016.

{¶105} R.C. §2945.37(A) provides that “[a] defendant is presumed competent to stand trial, unless it is proved by a preponderance of the evidence in a hearing under this section that because of his present mental condition he is incapable of understanding the nature and objective of the proceedings against him or of presently assisting his defense.” In the instant case, Appellant has failed to point to any evidence in the record demonstrating his incompetency to stand trial.

{¶106} Upon review, we find Appellant is unable to demonstrate he was prejudiced by counsel’s failure to request a competency evaluation. Accordingly, this argument fails under the second prong of *Strickland, supra*, and *Bradley, supra*.

{¶107} Appellant’s eighth assignment of error is overruled

{¶108} The judgment of the Court of Common Pleas, Ashland County, Ohio, is affirmed

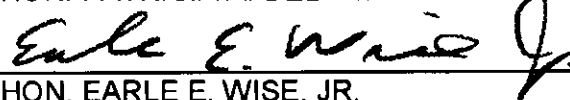
By: Wise, John, P. J.  
Delaney, J., and  
Wise, Earle, J., concur.



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HON. JOHN W. WISE

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HON. PATRICIA A. DELANEY

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HON. EARLE E. WISE, JR.

JWW/kw 0729

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

TYLER A. MORRIS aka TYLER MULLINS

Defendant-Appellant

JUDGMENT ENTRY

Case No. 20-COA-015

DEBORAH A. HYERS  
CLERK OF COURTS  
ASHLAND, OHIO

2021 AUG -2 AM 11:55

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Ashland County, Ohio, is affirmed.

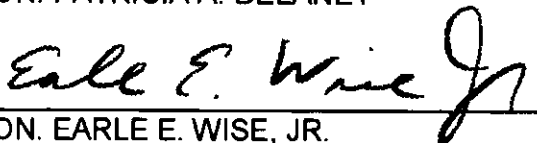
Costs assessed to Appellant.



HON. JOHN W. WISE



HON. PATRICIA A. DELANEY



HON. EARLE E. WISE, JR.

IN

**08:04 am, Apr 24, 2020**

DEBORAH A. MYERS

CLERK OF COURTS

ASHLAND COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO  
GENERAL DIVISION**

**STATE OF OHIO,**

**Plaintiff,**

**vs.**

**Case No. 19-CRI-218**

**TYLER A. MORRIS  
aka: TYLER A. MULLINS,**

**Defendant.**

**JUDGMENT ENTRY-SENTENCING**

This matter came before the Court, on the 20th day of April, 2020 for sentencing. The Defendant did not object to participate in this hearing via Skype Video Conferencing. The State of Ohio was present via Skype Video Conferencing represented by Prosecuting Attorney Christopher R. Tunnell. The Defendant was present via Skype Video Conferencing represented by Attorney Matthew J. Malone.

The Defendant was previously found guilty of the following offense(s):

**COMPLICITY (AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2903.01(A), an unclassified felony, together with its related gun specification; **COMPLICITY (AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2903.01(B), an unclassified felony, together with its related gun specification; **COMPLICITY (AGGRAVATED BURGLARY)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2911.11(A)(2), a felony of the first degree, together with its related gun specification; **COMPLICITY (AGGRAVATED**



**ROBBERY**), in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2911.01(A)(1), a felony of the first degree, together with its related gun specification; **COMPLICITY (ATTEMPT, AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2), 2923.02(A), and 2903.01(A), a felony of the first degree, together with its related gun specification; **COMPLICITY (ATTEMPT, AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2), 2923.02(A), and 2903.01(B), a felony of the first degree, together with its related gun specification; **AGGRAVATED TRAFFICKING IN DRUGS**, in violation of Ohio Revised Code section(s) 2925.03(A)(1), a felony of the fourth degree; **UNLAWFUL TRANSACTION IN WEAPONS**, in violation of Ohio Revised Code section(s) 2923.20(A)(1), a felony of the fourth degree; and **IMPROPERLY FURNISHING FIREARMS TO A MINOR**, in violation of Ohio Revised Code section(s) 2923.21(A)(3), a felony of the fifth degree.

The Court advised the parties that the Court had received and reviewed a full and complete Pre-Sentence Investigation Report from Oriana House prior to the hearing. Both the State and the Defendant reviewed the Pre-Sentence Investigation prior to the hearing.

Prior to imposing sentence, the Court gave defense counsel an opportunity to speak on behalf of the Defendant, which he did. The Court addressed the Defendant personally and asked him if he wished to make a statement on his own behalf or present any information in mitigation of punishment, which he did not. The State of Ohio spoke with regard to sentencing. Family members of the Victims also addressed the Court.

The Court reviewed the purposes of felony sentencing as set forth in Ohio Revised Code Section 2929.11. Specifically, the Court noted that:

- The overriding purposes of felony sentencing is to punish the offender and protect the public from future crime committed by the offender and others using the minimum sanctions that the Court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.
- The Court must always consider the need for incapacitation, deterrence, rehabilitation and restitution.
- The sentence should be commensurate with, and not demeaning to, the seriousness of the offender's conduct and its impact on the victim and consistent with sentences for similar crimes by similar offenders.
- The sentence must not be based on the offender's race, ethnicity, gender or religion.

In fashioning a sentence in this case, the Court has fully considered the provisions of O.R.C. Chapter 2929, the circumstances of the offense, the information contained in the pre-sentence investigation and the information furnished by the parties to this case. Based upon the facts and circumstances and the pre-sentence investigation, the Court specifically finds that the Defendant has the future ability to be employed and to pay financial sanctions in this case.

Based upon consideration of the purposes and principles of the felony sentencing law, the statutory sentencing factors, and after weighing the above findings, this Court finds that the Defendant is NOT amenable to community control sanctions and that a prison sentence is consistent with the purposes and principles of the felony sentencing law of Ohio and that community control is not required.

The Court finds that consecutive sentences are necessary to protect the public from future crime or to punish the offender; and consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.

The Court Further finds the offender committed one or more of the multiple offenses while the offender was on sanctions through juvenile court for a prior offense; and at least two (2) of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed, was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

Prior to sentencing the parties stipulated that for sentencing purposes the following counts shall merge:

- Counts One and Two shall merge. The State elected to proceed with sentencing on Count One.
- Counts Seven and Eight shall merge. The State elected to proceed with sentencing on Count Eight.
- Counts Nine and Ten shall merge. The State elected to proceed with sentencing on Count Nine.
- Counts Twelve and Thirteen shall merge. The State elected to proceed with sentencing on Count Twelve.
- All related gun specifications shall merge.

As stated in Count One (Count Two merged with Count One) of the Indictment for the offense of **COMPLICITY (AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2903.01(A), an unclassified felony, the Defendant is sentenced to **Life** under the authority of the Ohio Department of Rehabilitation and

Correction for placement in an appropriate penal institution, with eligibility for parole after twenty-five (25) years. The Defendant is fined zero dollars (\$0.00).

As stated in Count Eight (Count Seven merged with count Eight) of the Indictment for the offense of **COMPLICITY (AGGRAVATED ROBBERY)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2) and 2911.01(A)(1), a felony of the first degree, the Defendant is sentenced to a mandatory minimum of six (6) years to an indefinite term of nine (9) years under the authority of the Ohio Department of Rehabilitation and Correction for placement in an appropriate penal institution and fined zero dollars (\$0.00).

The sentence imposed for Count Eight shall be served **CONCURRENTLY** to the sentence imposed for Count One.

As stated in Count Nine (Count Ten merged with Count Nine) of the Indictment for the offense of **COMPLICITY (ATTEMPT, AGGRAVATED MURDER)**, in violation of Ohio Revised Code section(s) 2923.03(A)(2), 2923.02(A), and 2903.01(A), a felony of the first degree, the Defendant is sentenced to a mandatory minimum of ten (10) years to an indefinite term of fifteen (15) years under the authority of the Ohio Department of Rehabilitation and Correction for placement in an appropriate penal institution and fined zero dollars (\$0.00).

The sentence with regard to Count Nine shall be served **CONSECUTIVELY** to the sentence imposed for Count One, and served **CONCURRENTLY** to the sentence imposed for count Eight.

As stated in Count Eleven of the Indictment for the offense of **AGGRAVATED TRAFFICKING IN DRUGS**, in violation of Ohio Revised Code section(s) 2925.03(A)(1), a felony of the fourth degree, the Defendant is sentenced to nine (9) months under the

authority of the Ohio Department of Rehabilitation and Correction for placement in an appropriate penal institution and fined zero dollars (\$0.00).

The sentence with regard to Count Eleven shall be served **CONCURRENTLY** to the sentence(s) imposed for Counts One, Eight, and Nine.

As stated in Count Twelve (Count Thirteen merged with Count Twelve) of the Indictment for the offense of **UNLAWFUL TRANSACTION IN WEAPONS**, in violation of Ohio Revised Code section(s) 2923.20(A)(1), a felony of the fourth degree, the Defendant is sentenced to nine (9) months under the authority of the Ohio Department of Rehabilitation and Correction for placement in an appropriate penal institution and fined zero dollars (\$0.00).

The sentence with regard to Count Twelve shall be served **CONCURRENTLY** to the sentence(s) imposed for Counts One, Eight, Nine, and Eleven.

As stated in Specification to Count One (all related gun specifications merged with gun specification to Count One) of the Indictment, **FIREARM SPECIFICATION**, in violation of Ohio Revised Code section(s) 2941.145, the Defendant is sentenced to a mandatory three (3) years under the authority of the Ohio Department of Rehabilitation and Correction for placement in an appropriate penal institution.

The sentence with regard to Specification to Count One shall be served **CONSECUTIVELY** to the sentence(s) imposed for Counts One and Nine.

The Court noted that it is sentencing the Defendant to an aggregate prison term of **Life with Parole eligibility after thirty-eight (38) to forty-three (43) years.**

It is hereby ORDERED that the Defendant shall receive credit for 314 days of local jail time thru April 20, 2020, and he shall receive one (1) additional day's credit for each day served while awaiting transfer to the receiving institution.

The Court notified the Defendant of the possibility of the applicable periods of post-release control and the potential consequences of a violation of post-release control. Upon completion of the prison term ordered herein, the Defendant shall be subject to a mandatory term of five (5) years post-release control as determined pursuant to Ohio Revised Code Section 2967.28. The Defendant was advised that if he violates the terms of post-release control, the adult parole authority may impose a more restrictive sanction, or the parole board may return the Defendant to prison for up to nine (9) months, but not more than half of the original prison sentence. The Court further advised that if the Defendant commits a new felony while on post-release control, he may be given a prison sanction of a minimum of one (1) year up to the time remaining on post-release control, in addition to any sentence received on the new felony offense. The Defendant acknowledged his understanding of the Court's explanation of post-release control. For purposes of post-release control, the Court FINDS that the Defendant's county of residence is Ashland County, Ohio.

The Defendant received verbal and written notification of his duties to register as a violent offender pursuant to R.C. 2903.41. The Defendant shall be required to enroll in the violent offender database with respect to the offense that so classifies and shall have all violent offender database duties with respect to that offense for ten years after the offender initially enrolls in the database. The Defendant shall report to the Ashland County Sheriff's Department within ten days of his release to enroll in the violent offender

database. The Defendant verbally and in writing acknowledged his understanding of those duties.

The Court recommended against the Ohio Department of Rehabilitation and Correction placing the Defendant in a Boot Camp or Intensive Prison Program.

The Court advised the Defendant of the possibility of 5% to 15% earned reduction credit against his indefinite prison sentences as determined by the Ohio Department of Rehabilitation and Correction.

The Court advised the Defendant of the possibility of up to 8% earned good credit against his prison sentence as determined by the Ohio Department of Rehabilitation and Correction.

The Court advised the Defendant of the possibility of a 90 day/10% reduction against his prison sentence for participating in various treatment and/or educational programs as determined by the Ohio Department of Rehabilitation and Correction.

The Court informed the Defendant of his right to appeal the sentence, and of his right to court-appointed counsel to represent him in the appeal, if he were indigent. The Court further advised the Defendant of the necessity that any appeal be filed in writing with the Court within thirty (30) days of the filing of the sentencing entry of the Court. The Defendant acknowledged an understanding of the Court's explanation of his appellate rights. The Defendant, through his attorney, requested that the Court appoint appellate counsel for him. The Court appointed Attorney Brian Smith to represent the Defendant on appeal.

The Defendant is ORDERED to pay court costs in this case, including a sum of \$30.00, taxed as costs pursuant to Ohio Revised Code Section 2949.091, a sum of


\$25.00, taxed as court costs pursuant to Ohio Revised Code Section 120.36, and a sum of \$30.00, to be paid over to the Treasurer of the State of Ohio, pursuant to Ohio Revised Code Section 2743.70.

The Defendant is remanded to the custody of the Ashland County Sheriff's Office to await transportation to a state penal receiving institution. The Clerk of Courts is directed to issue a warrant of conveyance to the Ashland County Sheriff directing him to deliver the Defendant to the Ohio Department of Rehabilitation and Correction, Lorain Correctional Institution, Reception Center, Grafton, Ohio, for placement in an appropriate penal institution.

The Pre-Sentence Investigation Report shall be filed **UNDER SEAL** in this case.

Bond is released.

It is so ordered.

  
\_\_\_\_\_  
Ronald P. Forsthoefel Judge



IN

2019 OCT 10 PM 3: 15

DEBORAH J. WATERS  
CLERK OF COURTS  
ASHLAND, OHIO

**SUBROSA  
INDICTMENT**

Crim. Rule 6, 7

THE STATE OF OHIO  
ASHLAND COUNTY

:  
:

COURT OF COMMON PLEAS

Of the Term 1st Partial in the year two thousand and nineteen

*19-CRI-218*

THE JURORS OF THE GRAND JURY OF THE State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that **TYLER A. MORRIS, AKA: TYLER A. MULLINS, (SSN: unknown; DOB: 04-26-02) (IA: Ashland Police Department)** did:

COUNT ONE: COMPLICITY (AGGRAVATED MURDER) (Sections 2923.03(A)(2) and 2903.01(A) of the Ohio Revised Code.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did purposely aid or abet Gregg A. Kuzawa, II, and/or Michael Watson and/or Samuel Castle, in committing Aggravated Murder (ORC 2903.01(A)), to wit: the Aggravated Murder of Timothy J. Maust, in violation of Ohio Revised Code Sections 2923.03(A)(2) and 2903.01(A), COMPLICITY (AGGRAVATED MURDER).

SPECIFICATION TO COUNT ONE: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count One.

COUNT TWO: COMPLICITY (AGGRAVATED MURDER) (Sections 2923.03(A)(2) and 2903.01(B) of the Ohio Revised Code)

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins did purposely aid or abet Gregg A. Kuzawa, II, and/or Michael Watson and/or Samuel Castle, in committing Aggravated Murder (ORC Section 2903.01(B)), to wit: the Aggravated Murder of Timothy J. Maust, in violation of Ohio Revised Code Sections 2923.03(A)(2) and 2903.01(B), COMPLICITY (AGGRAVATED MURDER).

SPECIFICATION TO COUNT TWO: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Two.

COUNT THREE: CONSPIRACY (AGGRAVATED MURDER) (Sections 2923.01(A)(1) and 2903.01(A) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, with purpose to commit or to promote or to facilitate the commission of Aggravated Murder (ORC Section 2903.01(A)), did with another person or persons, to wit: Gregg A. Kuzawa, II, and/or Michael Watson and/or Samuel Castle, plan or aid in planning the commission of Aggravated Murder (ORC Section 2903.01(A)), to wit: the aggravated murder of Timothy J. Maust, in violation of Ohio Revised Code Sections 2923.01(A)(1) and 2903.01(A), CONSPIRACY (AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT THREE: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Three.

COUNT FOUR: CONSPIRACY (AGGRAVATED MURDER) (Sections 2923.01(A)(1) and 2903.01(B) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, with purpose to commit or to promote or to facilitate the commission of Aggravated Murder (ORC Section 2903.01(B)), did with another person or persons, to wit: Gregg A. Kuzawa, II, and/or Michael Watson and/or Samuel Castle, plan or aid in planning the commission of Aggravated Murder (ORC Section 2903.01(B)), to wit: the aggravated murder of Timothy J. Maust, in violation of Ohio Revised Code Sections 2923.01(A)(1) and 2903.01(B), CONSPIRACY (AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT FOUR: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Four.

COUNT FIVE: CONSPIRACY (AGGRAVATED MURDER) (Sections 2923.01(A)(1) and 2903.01(A) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, with purpose to commit or to promote or to facilitate the commission of Aggravated Murder (ORC Section 2903.01(A)), did with another person or persons, to wit: Gregg A. Kuzawa, II, and/or and/or Michael Watson and/or Samuel Castle, plan or aid in planning the commission of Aggravated Murder (ORC Section 2903.01(A)), to wit: the aggravated murder of Elizabeth Bunnell, in violation of Ohio Revised Code Sections 2923.01(A)(1) and 2903.01(A), CONSPIRACY (AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT FIVE: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Five.

COUNT SIX: CONSPIRACY (AGGRAVATED MURDER) (Sections 2923.01(A)(1) and 2903.01(B) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, with purpose to commit or to promote or to facilitate the commission of Aggravated Murder (ORC Section 2903.01(B)), did with another person or persons, to wit: Gregg A. Kuzawa, II, and/or Michael Watson and/or Samuel Castle, plan or aid in planning the commission of Aggravated Murder (ORC Section 2903.01(B)), to wit: the aggravated murder of Elizabeth Bunnell, in violation of Ohio Revised Code Sections 2923.01(A)(1) and 2903.01(B), CONSPIRACY (AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT SIX: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Six.

COUNT SEVEN: COMPLICITY (AGGRAVATED BURGLARY) (Sections 2923.03(A)(2) and 2911.11(A)(2) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did knowingly aid or abet Gregg A. Kuzawa, II, and/or and/or Michael Watson and/or Samuel Castle, in committing Aggravated Burglary (ORC Section 2911.11(A)(2)), to wit: the Aggravated Burglary of the Timothy J. Maust residence located at 1423 Cleveland Road, Apt. 8, Ashland, Ohio, in violation of Ohio Revised Code Sections 2923.03(A)(2) and 2911.11(A)(2), COMPLICITY (AGGRAVATED BURGLARY), a felony of the first degree.

SPECIFICATION TO COUNT SEVEN: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Seven.

COUNT EIGHT: COMPLICITY (AGGRAVATED ROBBERY) (Sections 2923.03(A)(2) and 2911.01(A)(1) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did knowingly aid or abet Gregg A. Kuzawa, II, and/or and/or Michael Watson and/or Samuel Castle, in committing Aggravated Robbery (ORC Section 2911.01(A)(1)), to wit: the Aggravated Robbery of Timothy J. Maust and/or Elizabeth Bunnell, in violation of Ohio Revised Code Sections 2923.03(A)(2) and 2911.01(A)(1), COMPLICITY (AGGRAVATED ROBBERY), a felony of the first degree.

SPECIFICATION TO COUNT EIGHT: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Eight.

COUNT NINE: COMPLICITY (ATTEMPT, AGGRAVATED MURDER) (Sections 2923.03(A)(2), 2923.02(A) and 2903.01(A) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did purposely aid or abet Gregg A. Kuzawa, II, and/or and/or Michael Watson and/or Samuel Castle, in committing Attempt (Aggravated Murder) (ORC Sections 2923.02(A) and 2903.01(A)), to wit: the attempted Aggravated Murder of Elizabeth Bunnell, in violation of Ohio Revised Code Sections 2923.03(A)(2), 2923.02(A), 2923.02(A), and 2903.01(A), COMPLICITY (ATTEMPT, AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT NINE: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Nine.

COUNT TEN: COMPLICITY (ATTEMPT, AGGRAVATED MURDER) (Sections 2923.03(A)(2), 2923.02(A) and 2903.01(B) of the Ohio Revised Code), a felony of the first degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did purposely aid or abet Gregg A. Kuzawa, II, and/or and/or Michael Watson and/or Samuel Castle, in committing Attempt (Aggravated Murder) (ORC Sections 2923.02(A) and 2903.01(B)), to wit: the attempted Aggravated Murder of Elizabeth Bunnell, in violation of Ohio Revised Code Sections 2923.03(A)(2), 2923.02(A) and 2903.01(B), COMPLICITY (ATTEMPT, AGGRAVATED MURDER), a felony of the first degree.

SPECIFICATION TO COUNT TEN: (Section 2941.145 of the Revised Code).

The Grand Jurors further find and specify that offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in Count Ten.

COUNT ELEVEN: AGGRAVATED TRAFFICKING IN DRUGS (Section 2925.03(A)(1) of the Ohio Revised Code), a felony of the fourth degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did knowingly sell or offer to sell a controlled substance, to wit: Methamphetamine, a schedule II controlled substance, in violation of Ohio Revised Code Section 2925.03(A)(1), AGGRAVATED TRAFFICKING IN DRUGS, a felony of the fourth degree.


COUNT TWELVE: UNLAWFUL TRANSACTION IN WEAPONS (Section 2923.20(A)(1) of the Ohio Revised Code), a felony of the fourth degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did recklessly sell, lend, give, or furnish any firearm to any person prohibited by Section 2923.13 or 2923.15 of the Revised Code from acquiring or using any firearm, to wit: Michael Watson, in violation of Ohio Revised Code Section 2923.20(A)(1), UNLAWFUL TRANSACTION IN WEAPONS, a felony of the fourth degree.

COUNT THIRTEEN: IMPROPERLY FURNISHING FIREARMS TO A MINOR (Section 2923.21(A)(3) of the Ohio Revised Code), a felony of the fifth degree.

In that on or about the period between June 10, 2019 and June 11, 2019, in Ashland County, Ohio, Tyler A. Morris, aka: Tyler A. Mullins, did furnish any firearm to a person who is under eighteen years of age, to wit: Michael Watson, or, subject to division (B) of this section, furnish any handgun to a person who is under twenty-one years of age, to wit: Michael Watson, in violation of Ohio Revised Code Section 2923.21(A)(3), IMPROPERLY FURNISHING FIREARMS TO A MINOR, a felony of the fifth degree.

and against the peace and dignity of the State of Ohio.

  
\_\_\_\_\_  
Prosecuting Attorney

\_\_\_\_\_  
Assistant Prosecuting Attorney

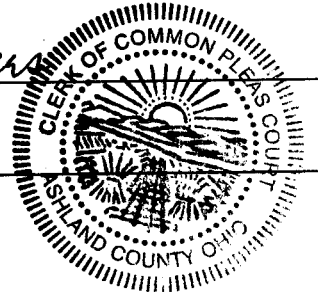
The State of Ohio, Ashland County:

I, the undersigned, Clerk of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the original indictment, with the endorsements thereon, now on file with my office.

WITNESS my hand and the seal of said Court, at Ashland, Ohio, this 10 day of October, 2019.

  
\_\_\_\_\_  
Clerk

By Deputy



No. 19-CRI-218  
Term 1<sup>st</sup> Partial, 2019  
**COMMON PLEAS COURT**  
Ashland County, Ohio

=====


vs.

**TYLER A. MORRIS**  
**AKA: TYLER A. MULLINS**


=====

Indictment for Complicity (Aggravated Murder), 2923.03(A)(2) & 2903.01(A) w/specification; Complicity (Aggravated Murder), 2923.03(A)(2) & 2903.01(B), w/specification; Conspiracy (Aggravated Murder), 2923.01(A)(1) & 2903.01(A), F-1, w/specification (2 Counts); Conspiracy (Aggravated Murder), 2923.01(A)(1) & 2903.01(B), F-1 w/specification (2 Counts); Complicity (Aggravated Burglary), 2923.03(A)(2) & 2911.11(A)(2), F-1 w/specification; Complicity (Aggravated Robbery), 2923.03(A)(2) & 2911.01(A)(1), F-1 w/specification; Complicity (Attempt, Aggravated Murder), 2923.03(A)(2), 2923.02(A) & 2903.01(A), F-1 w/specification; Complicity (Attempt, Aggravated Murder), 2923.03(A)(2), 2923.02(A) & 2903.01(B), F-1 w/specification; Aggravated Trafficking in Drugs, 2925.03(A)(1), F-4; Unlawful Transaction in Weapons, 2923.20(A)(1), F-4; Improperly Furnishing Firearms to a Minor, 2923.21(A)(3), F-5

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\_\_\_\_\_  
Assistant Prosecuting Attorney

A TRUE BILL

  
\_\_\_\_\_  
Foreperson, Grand Jury

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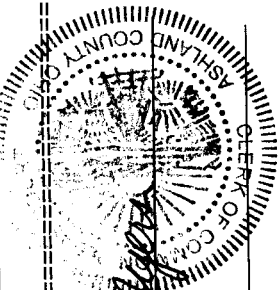
This Bill of Indictment found upon testimony sworn and sent before the Grand Jury at the request of the Prosecuting Attorney.

  
\_\_\_\_\_  
Foreperson, Grand Jury

Filed October 10, 2019

  
\_\_\_\_\_  
Clerk

by



IN

02:44 pm, Feb 28, 2020

DEBORAH A. MYERS

CLERK OF COURTS

ASHLAND COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
ASHLAND COUNTY, OHIO

STATE OF OHIO,

CASE No. 19-CRI-218

Plaintiff,

**JUDGMENT ENTRY**

-vs.-

TYLER A. MORRIS,  
AKA: TYLER A. MULLINS,

Defendant.

The Court, having considered the State of Ohio's Motion to Amend the Indictment, finds the motion to be well-taken and hereby GRANTS said motion. The dates for Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Thirteen are hereby amended to "on or about the period between June 9, 2019 and June 11, 2019" and Count Eleven to "June 9, 2019."

IT IS SO ORDERED



JUDGE RONALD P. FORSTHOEFEL  
COURT OF COMMON PLEAS

## USCS Const. Amend. 8

Archived code versions

Current through the ratification of the 27th Amendment on May 7, 1992.

### **Amendment 8 Bail—Punishment.**

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Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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End of Document

# USCS Const. Amend. 14

Archived code versions

Current through the ratification of the 27th Amendment on May 7, 1992.

## ***Amendment 14***

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**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Sec. 2. [Representatives—Power to reduce apportionment.]** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Sec. 3. [Disqualification to hold office.]** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the *Constitution* of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.



**Sec. 5. [Power to enforce amendment.]** The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

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End of Document

## Oh. Const. Art. I, § 9

Archived code versions

Current through January 1, 2022

### § 9 Bail; cruel and unusual punishments.

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All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

### History

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As amended January 1, 1998.

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End of Document

## Section 2929.02 | Murder penalties.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

*Effective: April 12, 2021    Latest Legislation: Senate Bill 256, House Bill 136 - 133rd General Assembly*

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(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section [2903.01](#) of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections [2929.022](#), [2929.03](#), and [2929.04](#) of the Revised Code, except that no person who is not found to have been eighteen years of age or older at the time of the commission of the offense shall be imprisoned for life without parole, and that no person who raises the matter of age pursuant to section [2929.023](#) of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense and no person who raises the matter of the person's serious mental illness at the time of the alleged commission of the offense pursuant to section [2929.025](#) of the Revised Code and is found under that section to be ineligible for a sentence of death due to serious mental illness shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B)(1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section [2971.03](#) of the Revised Code.

(3) Except as otherwise provided in this division, if a person is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section [2971.03](#) of the Revised Code. If the offender was under eighteen years of age at the time of the offense, the court shall impose an indefinite prison term of thirty years to life.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) If an offender receives or received a sentence of life imprisonment without parole, a sentence of life imprisonment, a definite sentence, or a sentence to an indefinite prison term under this chapter for an aggravated murder or murder that was committed when the offender was under eighteen years of age, the offender's parole eligibility shall be determined under section [2967.132](#) of the Revised Code.

(D) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(E)(1) In addition to any other sanctions imposed for a violation of section [2903.01](#) or [2903.02](#) of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section [4510.02](#) of the Revised Code.

(2) As used in division (E) of this section, "motor vehicle" has the same meaning as in section [4501.01](#) of the Revised Code.

*The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in [R.C. 1.52\(B\)](#) that amendments are to be harmonized if reasonably capable of simultaneous operation.*

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## Available Versions of this Section

January 1, 2008 – Senate Bill 10 - 127th General Assembly

April 12, 2021 – Amended by Senate Bill 256, House Bill 136 - 133rd General Assembly

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## Section 2929.02 | Murder penalties.

Ohio Revised Code / Title 29 Crimes-Procedure / Chapter 2929 Penalties and Sentencing

You are viewing a past version of this section that is no longer in effect

[View Current Version](#)

**Effective:** January 1, 2008    **Legislation:** Senate Bill 10 - 127th General Assembly

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(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section [2903.01](#) of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections [2929.022](#), [2929.03](#), and [2929.04](#) of the Revised Code, except that no person who raises the matter of age pursuant to section [2929.023](#) of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B)(1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section [2971.03](#) of the Revised Code.

(3) If a person is convicted of or pleads guilty to murder in violation of section [2903.02](#) of the Revised Code and also is convicted of or pleads guilty to a sexual motivation

specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section [2971.03](#) of the Revised Code.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section [2903.01](#) or [2903.02](#) of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section [4510.02](#) of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section [4501.01](#) of the Revised Code.

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## Available Versions of this Section

January 1, 2008 – Senate Bill 10 - 127th General Assembly

April 12, 2021 – Amended by Senate Bill 256, House Bill 136 - 133rd General Assembly





## Section 2953.08 | Appeal as a matter of right - grounds.

Ohio Revised Code / Title 29 Crimes-Procedure /  
Chapter 2953 Appeals; Other Postconviction Remedies

**Effective:** March 22, 2019 **Latest Legislation:** Senate Bill 201 - 132nd General Assembly

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(A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(1) The sentence consisted of or included the maximum definite prison term allowed for the offense by division (A) of section [2929.14](#) or section [2929.142](#) of the Revised Code or, with respect to a non-life felony indefinite prison term, the longest minimum prison term allowed for the offense by division (A)(1)(a) or (2)(a) of section [2929.14](#) of the Revised Code, the maximum definite prison term or longest minimum prison term was not required for the offense pursuant to Chapter 2925. or any other provision of the Revised Code, and the court imposed the sentence under one of the following circumstances:

(a) The sentence was imposed for only one offense.

(b) The sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum definite prison term or longest minimum prison term for the offense of the highest degree.

(2) The sentence consisted of or included a prison term and the offense for which it was imposed is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to division (B) of section [2929.13](#) of the Revised Code for purposes of sentencing. If the court specifies that it found one or more of the factors in division (B)(1)(b) of section [2929.13](#) of

the Revised Code to apply relative to the defendant, the defendant is not entitled under this division to appeal as a matter of right the sentence imposed upon the offender.

(3) The person was convicted of or pleaded guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced pursuant to division (A)(3) of section [2971.03](#) of the Revised Code, if the minimum term of the indefinite term imposed pursuant to division (A)(3) of section [2971.03](#) of the Revised Code is the longest term available for the offense from among the range of definite terms listed in section [2929.14](#) of the Revised Code or, with respect to a non-life felony indefinite prison term, the longest minimum prison term allowed for the offense by division (A)(1)(a) or (2)(a) of section [2929.14](#) of the Revised Code. As used in this division, "designated homicide, assault, or kidnapping offense" and "violent sex offense" have the same meanings as in section [2971.01](#) of the Revised Code. As used in this division, "adjudicated a sexually violent predator" has the same meaning as in section [2929.01](#) of the Revised Code, and a person is "adjudicated a sexually violent predator" in the same manner and the same circumstances as are described in that section.

(4) The sentence is contrary to law.

(5) The sentence consisted of an additional prison term of ten years imposed pursuant to division (B)(2)(a) of section [2929.14](#) of the Revised Code.

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section [2929.13](#) or Chapter 2925. of the Revised Code.

(2) The sentence is contrary to law.

(3) The sentence is a modification under section [2929.20](#) of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

(C)(1) In addition to the right to appeal a sentence granted under division (A) or (B) of this section, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences under division (C)(3) of section [2929.14](#) of the Revised Code and that the consecutive sentences exceed the maximum definite prison term allowed by division (A) of that section for the most serious offense of which the defendant was convicted or, with respect to a non-life felony indefinite prison term, exceed the longest minimum prison term allowed by division (A)(1)(a) or (2)(a) of that section for the most serious such offense. Upon the filing of a motion under this division, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

(2) A defendant may seek leave to appeal an additional sentence imposed upon the defendant pursuant to division (B)(2)(a) or (b) of section [2929.14](#) of the Revised Code if the additional sentence is for a definite prison term that is longer than five years.

(D)(1) A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.

(2) Except as provided in division (C)(2) of this section, a sentence imposed upon a defendant is not subject to review under this section if the sentence is imposed pursuant to

division (B)(2)(b) of section [2929.14](#) of the Revised Code. Except as otherwise provided in this division, a defendant retains all rights to appeal as provided under this chapter or any other provision of the Revised Code. A defendant has the right to appeal under this chapter or any other provision of the Revised Code the court's application of division (B)(2)(c) of section [2929.14](#) of the Revised Code.

(3) A sentence imposed for aggravated murder or murder pursuant to sections [2929.02](#) to [2929.06](#) of the Revised Code is not subject to review under this section.

(E) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (B)(3) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section [2947.06](#) or [2951.03](#) of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section [2951.03](#) of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in division (D)(1) of section [2951.03](#) of the Revised Code

and does not cause that report to become a public record, as defined in section [149.43](#) of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (I) of section [2929.20](#) of the Revised Code.

(G)(1) If the sentencing court was required to make the findings required by division (B) or (D) of section [2929.13](#) or division (I) of section [2929.20](#) of the Revised Code, or to state the findings of the trier of fact required by division (B)(2)(e) of section [2929.14](#) of the Revised Code, relative to the imposition or modification of the sentence, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A), (B), or (C) of this section shall remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings.

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section [2929.13](#), division (B)(2)(e) or (C)(4) of section [2929.14](#), or division (I) of section [2929.20](#) of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

(H) A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

(I) As used in this section, "non-life felony indefinite prison term" has the same meaning as in section [2929.01](#) of the Revised Code.

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## Available Versions of this Section

September 28, 2012 – House Bill 247, Senate Bill 160, Senate Bill 337 - 129th General Assembly

March 22, 2019 – Amended by Senate Bill 201 - 132nd General Assembly

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