[Cite as *State v. Vance*, 2018-Ohio-1313.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 16CA11
vs.	:	
LEWIS VANCE,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Angela Miller, Jupiter, Florida, for appellant.[1]

Michael DeWine, Ohio Attorney General, and Christopher L. Kinsler, Assistant Attorney General, Columbus, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-22-18
ABELE, J.

{¶ 1} This is an appeal from a Jackson County Common Pleas Court judgment of conviction and sentence. Lewis Vance, defendant below and appellant herein, assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO HOLD A HEARING OR REVIEW APPELLANT VANCE'S MOTION FOR NEW TRIAL. FIFTH AND FOURTEENTH

[1]Different counsel represented appellant during the trial court proceedings.

AMENDMENTS TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION; CRIM.R. 33."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY FAILING TO PROPERLY NOTIFY APPELLANT VANCE THAT HE WAS SUBJECT TO A DISCRETIONARY TERM OF UP TO THREE YEARS OF POST-RELEASE CONTROL AT THE SENTENCING HEARING. ADDITIONALLY, ANY NOTIFICATION REGARDING POST-RELEASE CONTROL WAS OMITTED FROM THE SENTENCING ENTRY. THESE FAILURES VIOLATED VANCE'S CONSTITUTIONAL RIGHTS AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

THIRD ASSIGNMENT OF ERROR:

"THE SENTENCE IMPOSED BY THE TRIAL COURT SHOULD BE REVERSED AND REMANDED AS IT DOES NOT COMPORT WITH THE PURPOSES OF FELONY SENTENCING. FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION; R.C. 2929.11."

FOURTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT FAILED TO SPECIFY ITS CONSECUTIVE SENTENCING FINDINGS IN ITS JUDGMENT ENTRY. R.C. 2929.14(C)(4)."

{¶ 2} On June 23, 2014, a Jackson County Grand Jury returned an indictment that charged appellant with crimes alleged to have been committed against Patrick Morgan, including aggravated murder in violation of R.C. 2903.01(D), murder in violation of R.C. 2903.02(A), murder in violation of R.C. 2903.02(B), felonious assault in violation of R.C. 2903.11(A)(1), and felonious assault in violation of R.C. 2903.11(A)(2). The indictment also included crimes alleged to have been

committed against Rachel Canode and her daughter M.C., including kidnapping in violation of R.C. 2905.01(A)(4), abduction in violation of R.C. 2905.02(A)(2), attempted rape in violation of R.C. 2923.02(A)/2907.02(A)(2), tampering with evidence in violation of R.C. 29021.12(A), abduction in violation of R.C. 2905.02(A)(2), and kidnapping in violation of R.C. 2905.01(B)(2). The trial court appointed counsel and appellant entered not guilty pleas to all charges.

{¶ 3} Counsel filed various motions and, inter alia, requested a competency evaluation. The trial court granted the request. At the November 21, 2014 competency hearing, both parties stipulated to the forensic report and the court later determined appellant to be competent to stand trial.

{¶ 4} On March 30, 2015, appellant's trial counsel requested leave to change appellant's plea to not guilty by reason of insanity (NGRI) and an evaluation, along with a third competency evaluation. The trial court granted appellant's request for leave to change his plea and ordered an evaluation at Appalachian Behavioral Healthcare. However, on June 16, 2015, the court ordered the evaluation to occur at Twin Valley Behavioral Healthcare. The court also denied the request for the third competency evaluation.

{¶ 5} On February 19, 2016, appellant sent a pro se letter to the trial court judge and indicated that he wished to have different counsel. At this juncture, counsel also requested yet another competency evaluation, but the trial court indicated that both prior evaluations determined appellant's competency, as set forth in R.C. 2945.37(G), and that appellant raised no additional facts or argument as to why a third competency evaluation was necessary. Thus, the court denied the motion.

{¶ 6} On July 14, 2016, the trial court issued a pretrial order and indicated that it had

received additional unsolicited correspondence from appellant, including: (1) a June 27, 2016 letter, (2) a June 27, 2016 voluntary statement, (3) a June 24, 2016 voluntary statement, and (4) a June 19, 2016 motion for dismissal and a list of witnesses. Because appellant had counsel, the court did not file any of the documents, but instructed counsel to file, within 14 days, any necessary motion regarding the issues that appellant raised in the documents. In a separate order, the court indicated that it had received defendant's pro se motion for acquittal, but again stated that it would not consider appellant's pro se motion because counsel represented appellant.

{¶ 7} The trial court held a four day trial beginning October 20, 2016. The first witness, William Ghearing, stated that he was driving toward Wellston, Ohio at 7:00 or 8:00 p.m. on November 29, 2013 when appellant's pick-up truck struck him head-on. When Ghearing approached appellant, appellant told him "You never seen me. You never seen me at all, and don't know who I am." Shortly thereafter, appellant disappeared.

{¶ 8} Chillicothe Police Officer Morgan Music testified that at the time of the accident, he worked for the Coalton Police Department. After Officer Music arrived at the crash site, he noticed a body in the truck bed. Once he secured the scene, Officer Music also learned that a man had been observed walking about a quarter mile away. Officer Music assisted in detaining that man (appellant), who displayed blood on his face, pants and jacket. Jackson County Sheriff's Deputy Urias Hall later visited the hospital to see appellant and testified that he smelled of alcohol, but appeared to be oriented.

{¶ 9} Officers eventually learned that appellant's truck actually belonged to Patrick Morgan. Also, Ohio Bureau of Criminal Investigation (BCI) Special Agent Bryan White testified about processing the vehicle crash site, and stated that the victim's (Morgan's) pants and underwear were

found around his knees, and that the victim had only one shoe.

{¶ 10} Nineteen-year-old Dustin Jones testified that on the night in question, appellant came to his parents' neighboring home and asked him to help load a deer into a truck. Jones assisted, but observed that the object was not a deer but rather a human body that he recognized as the person who had been staying with appellant. Appellant then threatened Jones and his family with harm if he did not help. Jones helped appellant, then returned to his parents' home. The following morning, he told his father about the incident.

{¶ 11} Rachel Canode testified that, as a friend of appellant's sister, she knew appellant. Canode explained that she was at her mother's house on November 29, 2013 when appellant came by to look for her mother to sell some rings. Canode told appellant that her mother was at a friend's house, and that she and her twelve-year-old daughter (M.C.) were also getting ready to walk to that house. Canode stated that while appellant walked with them, he kept putting his arms around her and grabbing her breasts and legs. Canode testified that the second or third time appellant put his arms around her, a knife fell from appellant's coat. When they arrived at appellant's sister's house (the house where appellant was living), he started to walk up the sidewalk to the home while Canode attempted to escape his grasp. Ultimately, Canode's daughter (M.C.) grabbed appellant's arm and appellant put the knife to her throat. Canode stated that she and her daughter then fled to her mother's house.

{¶ 12} Wellston Police Department Officer Steve Wilbur testified that he was at the fire station when he heard the radio call about the crash and the body in the truck bed. Officer Wilbur also explained that he later received a call from Rachel Canode who stated that appellant attempted to force her and her daughter into a house. Officer Wilbur testified that he met with Canode, then

walked to the home where appellant had been living. When no one answered the door, Officer Wilbur looked in the windows. Blood could be seen on the porch and inside the house on a couch and a knife. Officer Wilbur also found a single shoe in the driveway.

{¶ 13} BCI Agent Todd Fortner testified that he processed the crime scene at the home and found no signs of struggle. Fortner observed two couches, one with and one without bloodstains, a wooden chair, a lamp, a table and a small radio. None of the furniture had been overturned or broken. Because one couch and the door area contained all of the bloodstains, Fortner testified that, based on his experience, he believed that at the time of the attack the victim was either lying or sitting on the couch.

{¶ 14} BCI Forensic Scientist (DNA Section) Andrea Weisenburger testified that (1) the knife blade recovered from appellant's home contained Patrick Morgan's blood, (2) the knife handle had mostly Morgan's blood, but also some of appellant's blood, (3) Morgan's blood appeared on appellant's jeans, and (4) the truck's air bag had mostly Morgan's blood, but also some of appellant's blood.

{¶ 15} Franklin County forensic pathologist John Daniels testified that he performed Patrick Morgan's autopsy. The autopsy revealed multiple stab wounds to Morgan's face, eye and neck, including a wound through his eye and one inch into his brain. In total, Morgan had 24 wounds, including defensive wrist wounds. Daniels testified that the manner of death was homicide.

{¶ 16} Ohio Department of Rehabilitation and Corrections Parole Officer Brett McRoberts testified that on November 29, 2013, appellant was under his supervision while on community control after his judicial release. McRoberts noted that appellant had been living at a homeless shelter in Athens, but McRoberts did not know that appellant had moved to Wellston.

{¶ 17} At the close of the state's evidence, appellant's counsel requested a Crim.R. 29 motion for dismissal of Count 8 of the indictment (rape). The trial court denied the motion.

{¶ 18} Michelle Vance, appellant's sister, testified that her brother and his roommate, Morgan, were living at her home. She explained that she offered the two a place to stay after they had been removed from Timothy House, an Athens shelter.

{¶ 19} Phillip Lemaster testified that Jay Poe told him that Brian Canode, Rachel Canode's brother, wanted to talk with him. Lemaster stated that Brian Canode asked him to assault appellant in exchange for heroin, and that he agreed to do so. Brian Canode and Lemaster parked at Brian Canode's mother's house, then Lemaster, Canode and Jay Poe, who had been waiting at the Canode home, walked to appellant's house. Lemaster stated that appellant's truck was not at the house and when no one answered their knock, Brian Canode took Lemaster home.

{¶ 20} Brian Canode, however, denied any agreement with Lemaster to attack appellant. Canode also testified that he, Rachel Canode's brother, went to appellant's home that evening, but because he did not see the truck that his sister described, he left the residence. Against the advice of counsel, appellant chose to exercise his right to testify. On the night in question, appellant and Morgan were abusing drugs and alcohol. Appellant claimed that Rachel Canode's brother and serveral other men came to the house with bats and a knife and attacked him and Morgan. Appellant testified that the men beat him with a bat and raped him with a stick, but appellant managed to drag Morgan from the house and screamed for help. Appellant left the home to get help, but because he was unsuccessful in that endeavor, he returned to the house to save Morgan. After the men overwhelmed appellant, the men forced appellant into the truck and threw Morgan into the truck bed. Appellant testified that he did not kill Morgan, that he did not grab Rachel

Canode and that he did not attempt to restrain Canode or her daughter. Appellant, however, admitted that officers found his knife at the scene and that his knife contained Morgan's blood.

{¶ 21} After the four-day trial, the jury found appellant guilty of: Count 1 aggravated murder R.C. 2903.01(D), Count 2 murder R.C. 2903.02(A), Count 3 murder R.C. 2903.02(B)), Count 4 felonious assault R.C. 2903.11(A)(1), Count 5 felonious assault R.C. 2903.11(A)(2), and Count 9 tampering with evidence R.C. 2921.12(A). The jury also found appellant not guilty of: Count 6 kidnapping R.C. 2905.01(A)(4), Count 7 abduction R.C. 2905.02(A)(2), Count 8 attempted rape R.C. 2923.02(A)/2907.02(A)(2), Count 10 abduction R.C. 2905.02(A)(2), and Count 11 kidnapping R.C. 2905.01(B)(2).

{¶ 22} The trial court sentenced appellant to serve life in prison without parole on count one (aggravated murder) and thirty-six months on count 9 (tampering with evidence), with the sentences to be served consecutively to one another. At that point, appellant filed a pro se (1) Crim.R. 33 motion for new trial and argued that irregularities existed in the court proceedings, including jury and prosecutorial misconduct, and that new evidence supported his self-defense claim, and (2) a Crim.R. 29 motion for judgment of acquittal. This appeal followed.[2]

I.

[2]The Appellate Rules require us to determine the appeal on the assignments of error set forth in the briefs. App.R. 16 provides for a brief for the appellant, a brief for the appellee, and a reply brief, stating that "[n]o further briefs may be filed except with leave of court." As provided by App.R. 16, appellant's counsel filed an appellate brief and raised four assignments of error. The appellee also filed a brief and appellate counsel filed a reply brief. It also appears that appellant filed a pro se brief and raised four additional assignments of error. Neither the United States nor Ohio Constitution mandates a hybrid representation to allow a pro se appellant with appointed counsel to file briefs in addition to those that his attorney filed. *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987); *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus; *State v. White*, 71 Ohio App.3d 550, fn. 1, 594 N.E.2d 1087 (4th Dist.1991). Nevertheless, we may choose later in this opinion to briefly address appellant's arguments in his pro se brief.

{¶ 23} In his first assignment of error, appellant asserts that the trial court erred by refusing to hold a hearing or to conduct a review of appellant's motion for new trial.

{¶ 24} Generally, the decision to grant a new trial is within a trial court's discretion, and a ruling on a motion for a new trial will not be disturbed on appeal absent an abuse of that discretion. *State v. Schiebel*, 55 Ohio St.3d 71, 564 N.E.2d 54 (1990); *State v. Williams*, 43 Ohio St.2d 88, 330 N.E.2d 891 (1975). An abuse of discretion "implies that the court's attitude [was] unreasonable, arbitrary, or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Enterprises, Inc. v. River Place Community Redevelopment*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶ 25} Appellant filed a pro se motion for new trial, but the trial court refused to rule on appellant's pro se motion. Appellant contends that no sound reasoning process supported the court's decision, and, thus, the trial court's refusal to consider the motion constitutes an abuse of discretion. The state points out that the trial court refused to rule on the pro se motion because appellant had legal representation and that neither the United States Constitution nor the Ohio Constitution or case authority permits hybrid representation.

{¶ 26} "Although appellant has the right either to appear pro se or to have counsel, he has no corresponding right to act as co-counsel on his own behalf." *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987). The Supreme Court of Ohio has reaffirmed that principle and held that "in Ohio, a criminal defendant has the right to representation by counsel or to proceed pro se with the assistance of standby counsel. However, these two rights are independent of each other and may not be asserted simultaneously." *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d

227, paragraph one of the syllabus.

{¶ 27} In the case sub judice, appellant attempted to make multiple pro se filings while he had legal representation. The trial court aptly noted that appellant had legal representation and advised counsel to review the pro se filings and file any necessary motion within 14 days with regard to any relevant issues raised in the pro se documents. Once again, Ohio courts need not address pro se motions when the defendant enjoys the benefit of counsel. *See State v. Smith*, 4th Dist. Highland No. 09CA29, 2010-Ohio-4507, ¶ 100 ["The trial court indicated that it would refuse to consider motions filed by Smith because the court was appointing counsel to represent him. We are satisfied that the trial court did not err as, although a defendant 'has the right either to appear pro se or to have counsel, he has no corresponding right to act as co-counsel on his own behalf.'"]; *State v. Smith*, 1st Dist. Hamilton Nos. C-160836 and C-160837, 2017-Ohio-8558; *State v. Greenleaf*, 11th Dist. Portage No. 2005-P-0017, 2006-Ohio-4317. "When a criminal defendant is represented by counsel and counsel does not join the defendant's pro se motion or otherwise indicate a need for the relief sought by the defendant pro se, the trial court cannot properly consider the defendant's pro se motion." *Smith* at ¶ 32, citing *State v. Davis*, 10th Dist. Franklin No. 05AP-193, 2006-Ohio-5039, ¶ 12; *State v. Pizzaro*, 8th Dist. Cuyahoga No. 94849, 2011-Ohio-611, ¶ 7 ["One who is represented by counsel and who does not move the court to proceed pro se, may not 'act as co-counsel on his own behalf.'", quoting *Greenleaf* at ¶ 70].

{¶ 28} Appellant, however, argues that *State v. Keene*, 4th Dist. Washington No. 16CA10, 2017-Ohio-7058, mandates a different result. In *Keene*, the defendant, prior to the scheduled sentencing hearing, sent two letters to the trial court, without counsel's assistance, and sought to withdraw his guilty pleas. Although the trial court held a hearing and ruled on the defendant's pro

se motion in spite of counsel's representation, the court was not required to do so. Once again, the Supreme Court of Ohio has established that a defendant has either the right to representation by counsel or the right to proceed pro se, but has no right to hybrid representation. *Martin*, paragraph one of the syllabus.

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

II.

{¶ 30} In his second assignment of error, appellant asserts that the trial court: (1) failed to properly notify him at the sentencing hearing that he is subject to a discretionary term of up to three years of post-release control, and (2) omitted from the sentencing entry the notification regarding post-release control. Appellant asserts that these failures violate his constitutional rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶ 31} In the case sub judice, appellant was convicted of aggravated murder and tampering with evidence. The tampering with evidence charge carries an additional three-year term of post-release control. At sentencing, the trial court stated: "If you are placed on Post-Release Control under the Authority of the Adult Parole, you could be returned to Prison for up to nine months for each violation of rule if your stated Prison term equals or exceeds eighteen months. Otherwise, the longest single Prison sanction, you (unintelligible) half of your stated Prison term. You can be returned to Prison for up to fifty percent of your Prison Sentence for all violations committed. If convicted of a new Felony while on Post-Release Control, in addition to being punished for the new offense, the Court can add an additional consecutive Prison term of one year, however, whatever part

remains of the Post-Release Control term; whichever is greater."

{¶ 32} The state concedes that the post-release control language did not state that the term would be three years. The Supreme Court of Ohio has held that the failure to properly impose post-release control renders the post-release control portion of the sentence void. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26. The remedy for this error is a new sentencing hearing, limited to the proper imposition of the post release control sanction. *Id.* at ¶ 29. As we previously mentioned, the state concedes this issue and we hereby sustain appellant's second assignment of error.

{¶ 33} Accordingly, we find merit to appellant's argument and we remand this matter to the trial court for proceedings consistent with R.C. 2929.191 to properly impose the term of post-release control.

III.

{¶ 34} In his third assignment of error, appellant, citing the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the Ohio Constitution and R.C. 2929.11, asserts that the trial court's sentence does not comport with the purposes of felony sentencing. In particular, appellant argues that the trial court's refusal to consider appellant's mental health issues and impose a term of life without parole, which will not provide appellant with an opportunity for parole or future mental health services, fails to comply with the requirements and purpose of R.C. 2929.11.

{¶ 35} Appellant cites *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, for the proposition that an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law only if the appellate court finds, by clear and convincing evidence,

that the record does not support the sentence. Counsel argues that appellant self-medicated with alcohol and drugs and had no access to professional mental health services. The state counters that *Marcum* dealt with sentencing for a classified felony, not for aggravated murder. *Id.* at ¶ 22-23. The state points out that *Marcum* relied on R.C. 2953.08 for the statutory authority to review a felony sentence, however, R.C. 2953.08(D)(3) makes clear, "[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.*" (Emphasis added.)

{¶ 36} The Supreme Court of Ohio has held that "R.C. 2953.08(D) is unambiguous. 'A sentence imposed for aggravated murder or murder pursuant to section 2929.02 to 2929.06 of the Revised Code is not subject to review under this section' clearly means what it says: such a sentence cannot be reviewed." *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, ¶ 17. Moreover, this court has held "[i]t is evident that the General Assembly intended to treat sentencing on aggravated murder and murder convictions differently from other felony sentences." *State v. Hawkins*, 4th Dist. No. 13CA3, 2014-Ohio-1224, ¶ 15., citing *State v. Porterfield* at ¶ 17-18. We wrote: "we find pursuant to R.C. 2953.08(D)(3), we lack statutory authority to review Hawkins' sentence on an evidentiary basis." *Id.*

{¶ 37} Appellant also contends that the trial court's sentence did not comport with due process and is excessive. However, our review of the record reveals that, although the trial court expressed concern and acknowledged appellant's mental health issues, and allowed competency evaluations and forensic reviews and pondered how better treatment earlier in life might have affected appellant, the court concluded that the aggravating factors nevertheless outweighed appellant's mental health concerns: "You know, we've talked about the failures of the mental health

system. We've talked about the dramatic cuts to that system. Maybe if we had a system that was properly funded, Mr. Vance may have received appropriate treatment. But, those are all 'what ifs.' I don't know. The reality that I have to deal with is that Mr. Vance is a dangerous individual. He has committed a savage crime." The court further noted the injury to the victim, his family, and appellant's criminal history, including a prior violent offense.

{¶ 38} Consequently, after our review, we conclude that (1) appellant's aggravated murder sentence is not subject to appellate review, and (2) appellant's sentence for tampering with evidence comported with due process and is not excessive. Accordingly, we overrule appellant's third assignment of error.

IV.

{¶ 39} In his final assignment of error, appellant asserts that at the sentencing hearing the trial court sentenced him to serve (1) life in prison without parole for the aggravated murder conviction, and (2) thirty-six months on the tampering with evidence charge. Appellant argues, however, that the court failed to specify its consecutive sentencing findings in its entry as R.C. 2929.14(C)(4) requires. The court stated: "[t]hat will be consecutive punishment as necessary to protect the public. The punishment is not disproportionate to the crime, and your criminal history demonstrates that consecutive sentences are necessary." The court's December 6, 2016 sentencing entry recited the statutory language of R.C. 2929.14(C)(4) - including the subsections (a), (b), and (c). However, the entry provides lines next to the restatements of these subsections, presumably, as the state contends, as a check-off. Based on the trial court's remarks at sentencing, subsection (c) - "the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender" should have been initialed or checked, but it

does not appear that the court did so.

{¶ 40} The state maintains that this error may be corrected with a nunc pro tunc entry. However, in view of our resolution of appellant's second assignment of error, the trial court may address this issue when, on remand, it addresses the imposition of post-release control as referenced in appellant's second assignment of error.

{¶ 41} Accordingly, we sustain appellant's fourth assignment of error and remand the matter to the trial court to include the findings to support consecutive sentencing.

V.

{¶ 42} In conclusion, we (1) overrule appellant's first and third assignments of error, (2) find appellant's second and fourth assignments of error to be well-taken, and (3) remand this cause to the trial court to address the post-release control term for tampering with evidence the and the findings for consecutive sentences.[3]

JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED FOR FURTHER

[3]Appellant's pro se brief contends that the trial court abused appellant's First Amendment rights when it referred to appellant as Muslim. However, our review finds no such reference. Appellant also asserts that he consistently stated that he had been attacked on November 29, 2013. Thus, he appears to attack the weight and sufficiency of the evidence. However, the state presented ample competent, credible evidence so that any rational trier of fact could have found the essential elements of aggravated murder and tampering with evidence proven beyond a reasonable doubt. The jury heard appellant's version of the events and did not find his testimony credible. Appellant also asserts that the trial court erred by failing to replace the jury after (1) one juror revealed she participated in an event in support of the county prosecutor, and (2) another juror shared outside information to the jury. However, the trial court properly questioned the first juror and concluded that she could be impartial. Later, during deliberations, the second juror revealed to several jurors that she disputed the victim's daughter's (M.C.) age. After the trial court conducted a hearing and questioned the jurors, the court dismissed the second juror, brought in an alternate, and retained the other jurors who stated that the comments did not influence their deliberations. Appellant also asserts that his trial counsel failed to (1) use certain evidence, (2) investigate and subpoena witnesses, (3) remove jury members, (4) defend appellant, and (5) that he should have been granted new counsel. However, appellant's claims are undermined by the fact that the jury found appellant not guilty of five of the eleven charges. Additionally, after the trial court discussed appellant's representation, the court asked appellant if he was satisfied with defense counsel, and appellant agreed. Here, counsel's representation did not fall below an objective standard of reasonableness.

PROCEEDINGS CONSISTENT WITH THIS OPINION.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed in part, reversed in part, and cause remanded for further proceedings consistent with this opinion. Appellant and Appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry this judgment into execution.

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

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

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

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