

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

JASON C. TWILEY,

Defendant-Appellant.

Case No. 23-0340

On Appeal from the JEFFERSON
County Court of Appeals
SEVENTH Appellate District

C.A. Case No. 21 JE 0007

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JASON C. TWILEY

JEFFERSON County Prosecutor's Office

Prosecuting Attorney

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PLAINTIFF-APPELLEE, STATE OF
OHIO

#

JASON C. TWILEY #A780710
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MARION, OH 43301

DEFENDANT-APPELLANT, PRO SE

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TABLE OF CONTENTS

Page No.

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION

STATEMENT OF THE CASE AND FACTS

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW NO. I:

THE VERDICTS OF GUILTY TO THE OFFENSES OF
MURDER AND AGGRAVATED ARSON WERE NOT SUPPORTED
BY SUFFICIENT EVIDENCE AND WERE AGAINST THE MANIFEST
WEIGHT OF THE EVIDENCE.

PROPOSITION OF LAW NO. II:

THE TRIAL COURT ABUSED ITS DISCRETION IN
PERMITTING THE STATE OF OHIO TO INTRODUCE
OTHER-ACTS EVIDENCE.

PROPOSITION OF LAW NO. III:

THE APPALLANT WAS DENIED THE EFFECTIVE
ASSISTANCE OF COUNSEL.

CONCLUSION.....

CERTIFICATE OF SERVICE

APPENDIX:

Judgment Entry and Opinion, Court of Appeals, JEFFERSON County,
Case No. 21 JE 0007 A-1

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.

APPELLANT BRINGS THIS MATTER TO THE OHIO SUPREME COURT; RESPECTFULLY THE TRIAL COURT COMMITTED TRIAL ERRORS INVOLVING THE SUBJECT AT HAND. THEY ALLOWED EVIDENCE PRESENTED TO THE JURY THAT SHOW TREMENDOUS DAMAGING PREJUDICE ERRORS. THE COURT OF APPEALS ACKNOWLEDGED THE ERRORS IN SAID ARGUMENTS THAT WAS PRESENTED BUT STILL OVERRULED ON THE PROPOSITION OF LAW. THEREFORE THIS MATTER IS BROUGHT TO THIS HONORABLE COURT TO BE OVERSEEN AND CONSIDERED WITH GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.

STATEMENT OF THE CASE AND THE FACTS

- ON OCTOBER 2, 2019, JASON CORTAZ TWILLEY WAS INDICTED BY JEFFERSONSON COUNTY GRAND JURY ON ONE (1) COUNT OF MURDER (R.C. 2923.02-UF) WITH A FIREARM SPECIFICATION AND ONE (1) COUNT OF AGGRAVATED ARSON (R.C. 2909.02-F2). ON OCTOBER 9th, 2019, THE APPELLANT WAS ARRAIGNED IN THE JEFFERSON COUNTY COMMON PLEAS COURT. HE ENTERED A PLEA OF NOT GUILTY TO ALL COUNTS CONTAINED IN THE INDICTMENT. ON MARCH 15th-17th OF 2020, A TRIAL BY JURY WAS HELD IN THE JEFFERSON COUNTY COMMON PLEAS COURT. THE APPELLANT WAS FOUND GUILTY ON ALL COUNTS. HE WAS SENTENCED (15) YEARS TO LIFE FOR MURDER, (3) YEARS MANDATORY FOR FIREARM SPECIFICATION, (8-12) YEARS ON AGGRAVATED ARSON. THE SENTENCE WAS ORDERED TO BE SERVED CONSECUTIVELY.
- ON AUGUST 12, 2019, SERGEANT RYAN LULLA OF THE STEUBENVILLE POLICE DEPARTMENT WAS WORKING THE MIDNIGHT SHIFT. BEFORE 4AM, HE WAS DISPATCHED TO THE 400 BLOCK OF MAXWELL AVE. UPON ARRIVAL HE OBSERVED SMOKE COMING FROM A RESIDENCE. AS HE WALKED TO THE FRONT PORCH, HE NOTICED THAT THE FRONT LIVING ROOM WAS ON FIRE. A NEIGHBOR ADVISED THAT A FEMALE AND A JUVENILE LIVED AT THE RESIDENCE. HE DID NOT KNOW IF THEY WERE HOME. OFFICERS WERE UNABLE TO LOCATE THE FEMALE OCCUPANT OF THE INVOLVED HOME. WHILE ON SCENE, A NEIGHBOR REPORTED THAT A CITY ISSUED GARAGE CAN WAS MISSING. OFFICERS BEGAN CHECKING THE AREA FOR THE MISSING GARBAGE CAN IN THE BELIEF THAT IT MAY BE A SOURCE OF POTENTIAL EVIDENCE. THE GARAGE WAS 3 GARAGES DOWN FROM THE LOCATION OF THE FIRE. A GARBAGE CAN WAS OBSERVED. THE GARBAGE CAN WAS OPENED REVEALING A FEMALE THAT HAD BEEN PLACED UPSIDE DOWN, THE FEMALE WAS DECEASED. PROSECUTOR AND CORONER WERE CONTACTED.

THE HANDLE AND LOCK MECHANISM WERE SWABBED FOR POSSIBLE DNA. DIFFERENT AREAS OF THE TRASHCAN WERE ALSO SWABBED FOR POSSIBLE DNA EVIDENCE. THE FEMALE BODY WAS REMOVED FROM THE GARBAGE CAN. THE DECEASED WAS ALSO SWABBED FOR DNA EVIDENCE. OFFICERS ALSO TOOK PHOTOGRAPHS AND DNA SWABS FROM A GASCAN FOUND BEHIND 428 MAXWELL. THE HOMEOWNER CLAIMED THE GASCAN DID NOT BELONG TO HIM. IT WAS OBSERVED THAT THE INJURY FROM THE VICTIM WAS A BULLET. OFFICERS WENT BACK TO THE HOME OF THE VICTIM (417 MAXWELL AVE) AND WERE UNABLE TO FIND A CASING. THE VICTIM'S PURSE AND APPELLANT'S WALLET WAS LOCATED, A BOX OF 380 AMMUNITION AND A BLUE BAG OF 9MM AMMUNITION. OFFICERS HAD LEARNED THAT APPELLANT WAS VICTIM'S LIVE IN BOYFRIEND THRU ~~THE~~ NEIGHBORS. THE APPELLANT WAS SAID TO HAVE BEEN SEEN AT THE 417 MAXWELL HOME THE DAY BEFORE, HAD BORROWED A CAR FROM SOMEONE, AND NEIGHBOR DESCRIBES SOMEONE FITTING THE APPELLANT DESCRIPTION AT 3AM PULLING SOMETHING HEAVY TOWARDS BACK OF ADDRESS. OFFICERS TRIED TO CONTACT APPELLANT, DISCOVERED CAR HE BORROWED ABANDONED IN CHICAGO, US MARSHALS LOCATED APPELLANT IN LOUISVILLE, KENTUCKY. APPELLANT WAS TRANSFERRED BACK TO OHIO, JEFFERSON COUNTY TO STAND TRIAL ON THE SAID ABOVE CHARGES.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

THE VERDICTS OF GUILTY TO THE OFFENSES OF MURDER AND AGGRAVATED ARSON WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

State v. Smith, 80 OHIO ST. 3d 89 (1997)

State v. Jenks, 61 OHIO ST. 3d 259 (1991)

State v. MARTIN, 20 OHIO APP. 3d 172 (1983)

State v. Rouse, 2005-OHIO-6328

State v. Hill, 75 OHIO ST. 3d 195 (1996)

State v. DYKE, 2002-OHIO 1152

State v. THOMPSON, 78 OHIO STATE 3d 380 (1997)

State v. THORN, 2018-OHIO-1028

Strickland v. Washington, 416 U.S. 668 (1984)

SUFFICIENCY OF THE EVIDENCE IS THE LEGAL STANDARD APPLIED TO DETERMINE WHETHER THE EVIDENCE IS LEGALLY SUFFICIENT AS A MATTER OF LAW TO SUPPORT THE VERDICT. STATE V. SMITH 80 OHIO ST. 3d 89 (1997). SUFFICIENCY IS A TEST OF ADEQUACY. STATE V. THOMPSON, 78 OHIO ST. 3d 380 (1997) WHETHER THE EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN A VERDICT IS A QUESTION OF LAW. Id. IN REVIEWING THE RECORD FOR SUFFICIENCY, THE RELEVANT INQUIRY IS WHETHER, AFTER VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, ANY RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS PROVEN BEYOND A REASONABLE DOUBT. SMITH at 113. WHEN EVALUATING THE SUFFICIENCY OF THE EVIDENCE TO PROVE THE ELEMENTS, IT MUST BE REMEMBERED THAT CIRCUMSTANTIAL EVIDENCE AND DIRECT EVIDENCE HAS THE SAME

-2-

PROHIBITIVE VALUE. STATE V. THONE 2018 OHIO-1028 CITING
STATE V. JENKS 61 OHIO ST. 3D 259 (1991)

IN DETERMINING WHETHER A VERDICT IS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE, ~~THE~~ A COURT MUST
REVIEW THE ENTIRE RECORD, WEIGH THE EVIDENCE AND
ALL REASONABLE INFERENCES, AND DETERMINE WHETHER IN
RESOLVING ~~THE~~ CONFLICTS IN THE 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. THOMPSON, 78 OHIO ST 3D 382.
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. ID. IN MAKING ITS DETERMINATION, A REVIEWING COURT
IS NOT REQUIRED TO VIEW THE EVIDENCE IN A LIGHT MOST
FAVORABLE TO THE PROSECUTION BUT MAY CONSIDER AND WEIGH
ALL THE EVIDENCE PRESENTED AT TRIAL. ID AT 390.
GRANTING A NEW TRIAL IS ONLY APPROPRIATE IN EXTRAORDINARY
CASES WHERE THE EVIDENCE WEIGHS HEAVILY AGAINST THE CONVICTION
STATE V. MARTIN, 20 OHIO APP 3D 172 (1983) DETERMINATIONS OF
WITNESS CREDIBILITY, CONFLICTING TESTIMONY AND EVIDENCE WEIGHT
ARE PRIMARILY FOR THE TRIER OF THE FACTS WHO SITS IN
THE BEST POSITION TO JUDGE THE WEIGHT OF THE EVIDENCE
AND THE WITNESSES CREDIBILITY BY OBSERVING THEIR GESTURES,
VOICE INFLECTIONS, AND DEMEANOR.

STATE V. ROUSE, 2005- OHIO-6328, CITING STATE V. HILL 25 OHIO ST. 3d 195 (1996) THE SEVENTH DISTRICT COURT OF APPEALS HELD IN STATE V. DYKE, 2002- OHIO-1152, "WHEN THERE EXISTS TWO FAIRLY REASONABLE VIEWS OF THE EVIDENCE OR TWO CONFLICTING VERSION OF EVENTS, NEITHER OF WHICH IS UNBELIEVABLE, IT IS NOT OUR PROVINCE TO CHOOSE WHICH ONE WE BELIEVE.

"THE SIXTH AMENDMENT RIGHT TO COUNSEL EXISTS, AND IS NEEDED, IN ORDER TO PROTECT THE FUNDAMENTAL RIGHT TO A FAIR TRIAL." STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)."

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

THE TRIAL COURT ABUSED ITS DISCRETION
IN PERMITTING THE STATE OF OHIO TO
INTRODUCE OTHER-ACTS EVIDENCE

STATE V. COLEMAN 45 OHIO ST. 3D 298 (1989)

TO BE RELEVANT, AND THUS ADMISSIBLE, EVIDENCE MUST
TEND TO MAKE THE EXISTENCE OF ANY FACT THAT IS
OF CONSEQUENCE TO THE DETERMINATION OF THE ACTION
MORE PROBABLE OR LESS PROBABLE THAN IT WOULD
WITHOUT THE EVIDENCE. EVIDENCE RULE 401. EVIDENCE
RULE 403 (A) STATES THAT RELEVANT EVIDENCE IS NOT ADMISSIBLE
IF ITS PROBATIVE VALUE IS OUTWEIGHED BY THE DANGER OF
UNFAIR PREJUDICE, CONFUSION OF THE ISSUES OR MISLEADING
THE JURY. EVIDENCE RULE 404 (B) DECLARES THAT EVIDENCE
OF OTHER ~~CRIMES~~ CRIMES, WRONGS, OR ACTS IS NOT ADMISSIBLE
TO PROVE THE CHARACTER OF A PERSON IN ORDER TO SHOW
CONFORMITY THEREWITH. IT MAY BE ADMISSIBLE FOR OTHER
PURPOSES, SUCH AS PROOF OF MOTIVE, PREPARATION, PLAN,
IDENTITY, ABSENCE OF MISTAKE OR ACCIDENT. EVIDENCE
OF OTHER CRIMES, WRONGS OR ACTS MUST BE ~~CONSIDERED~~
CONSTRUED AGAINST ADMISSIBILITY. STATE V. COLEMAN
45 OHIO ST. 3D 298 (1989)

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

THE APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL

STATE V. CALHOUN, 80 OHIO ST. 3d 289 (1999)

STATE V. CARTER, 72 OHIO ST. 3d 545 (1995)

STATE V. THOMPSON 33 OHIO ST. 3d 1 (1987)

LOCKHART V. FRETWELL 506 U.S. 264 (1993)

STATE V. WATKINS, 2008-OHIO-0634

STATE V. OTTE, 74 OHIO ST. 3d 358, 1996-OHIO-108

IN OHIO, A LICENSED ATTORNEY IS PRESUMED TO BE COMPETENT.
STATE V. CALHOUN, 80 OHIO ST. 3d 289 (1999). IN EVALUATING
TRIAL COUNSEL'S PERFORMANCE, APPELLANT REVIEW IS HIGHLY
DEFERENTIAL AS THERE IS A STRONG PRESUMPTION THAT COUNSEL
CONDUCT FELL WITHIN THE WIDE RANGE OF REASONABLE
PROFESSIONAL ASSISTANCE. BRADLY AT 142-143 CITING STRICKLAND
AT 689. APPELLANT COURTS ARE NOT PERMITTED TO SECOND-
GUESS THE STRATEGIC DECISIONS OF TRIAL COUNSEL. STATE V.
CARTER, 72 OHIO ST. 3d 545 (1995). EVEN INSTANCES
BE DEBATABLE STRATEGY VERY RARELY CONSTITUTE
INEFFECTIVE ASSISTANCE OF COUNSEL STATE V. THOMPSON
33 OHIO ST 3d 1 (1987)

TO SHOW PREJUDICE, A DEFENDANT MUST PROVE HIS
 LAWYERS PERFORMANCE WAS SO SERIOUS THAT THERE
 IS A REASONABLE PROBABILITY THE RESULT OF THE PROCEEDINGS
 WOULD HAVE BEEN DIFFERENT. CARTER at 558. PREJUDICE FROM
 DEFECTIVE REPRESENTATION JUSTIFIES REVERSAL ONLY WHERE
 THE RESULTS WERE UNRELIABLE THE PROCEEDING WAS FUNDAMENTALLY
 UNFAIR AS A RESULT OF THE PERFORMANCE OF TRIAL COUNSEL, CARTER
 CITING LOCKHART V. FRETWELL, 506 US 364 (1993) AN
~~PERFORMANCE OF TRIAL COUNSEL~~ INEFFECTIVE ASSISTANCE
 OF COUNSEL CLAIM CANNOT BE PREDICATED UPON SUPPOSITION,
 STATE V. WATKINS, 2005-0110-0634. PROOF OF INEFFECTIVE
 ASSISTANCE OF COUNSEL REQUIRES MORE THAN VAGUE
 SPECULATIONS OF PREJUDICE. ID. CITING STATE V. OITE, 74
 OHIO ST 3d 555, 1996 OHIO-108

IT IS CLEAR FROM THE RECORD THAT THE APPELLANT
 RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING
 TRIAL. THIS REPRESENTATION PLAYED A MATERIAL ROLE IN THE
 FINDING OF GUILT ON BOTH COUNTS IN THE INDICTMENT.

CONCLUSION

THE JURY VERDICT OF GUILTY TO THE OFFENSES OF MURDER AND AGGRAVATED ARSON WAS BASED ON LEGALLY INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. FURTHER, THE TRIAL COURT COMMITTED ERROR IN PERMITTING THE STATE TO INTRODUCE OTHER-ACTS EVIDENCE AGAINST ME (APPELLANT) AT TRIAL. TRIAL COUNSEL'S PERFORMANCE FELL BELOW THE SIXTH AMENDMENT THRESHOLD FOR PROVIDING EFFECTIVE ASSISTANCE. FINALLY, THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING ME (APPELLANT) TO CONSECUTIVE ~~10~~ SENTENCES ON THE OFFENSES OF MURDER AND AGGRAVATED ARSON. WHEREFORE, THE JUDGMENT OF THE JEFFERSON COUNTY COMMON PLEAS COURT MUST BE REVERSED.

Respectfully submitted,

DEFENDANT-APPELLANT, PRO SE

Name and Inmate Number

Name of Institution

Address

City, State and Zip Code

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION** was forwarded by regular U.S. mail to the office of the Jefferson County Prosecutor this 1 day of JUNE, 2023.

Mailed to:

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DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

JASON C. TWILEY,

Defendant-Appellant.

Case No. 23-03410

On Appeal from the JEFFERSON
County Court of Appeals
SEVENTH Appellate District

C. A. Case No. 21 J6007

APPENDIX TO

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JASON C. TWILEY**

The Supreme Court of Ohio

State of Ohio

v.

Jason Cortez Twiley

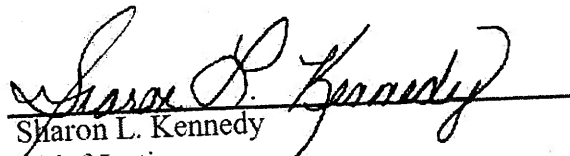
Case No. 2023-0340

ENTRY

Upon consideration of appellant's motion for delayed appeal, it is ordered by the court that the motion is granted.

It is further ordered by the court that appellant shall file a memorandum in support of jurisdiction within 30 days from the date of this entry.

(Jefferson County Court of Appeals; No. 21 JE 0007)


Sharon L. Kennedy
Chief Justice