[Cite as *State v. Lawson*, 2015-Ohio-4394.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA20
vs.	:	
SHAUN M. LAWSON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Jerry L. McHenry, Pickerington, Ohio, for appellant.

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Robert A. Chamberlain, Pickaway County Assistant Prosecuting Attorney, Circleville, Ohio, for appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 10-8-15
ABELE, J.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court judgment of conviction and sentence. The jury found Shaun M. Lawson, defendant below and appellant herein, guilty of: (1) aggravated murder, in violation of R.C. 2903.01(A), with a firearm specification; (2) aggravated murder, in violation of R.C. 2903.01(B), with a firearm specification; (3) murder, in violation of R.C. 2903.02(A), with a firearm specification; (4) murder, in violation of R.C. 2903.02(B), with a firearm specification; (5) aggravated burglary, in violation of R.C. 2911.11(A)(1), with a firearm specification; (6) grand theft, in violation of R.C.

2913.02(A)(1), with a firearm specification; and (7) conspiracy to commit murder, in violation of R.C. 2923.01(A)(1).

{¶ 2} Appellant raises the following assignments of error for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL TO APPELLANT BY FAILING TO FILE A MOTION TO SUPPRESS HIS STATEMENT TO POLICE, IN WHICH HE ADMITTED KILLING HIS GRANDFATHER."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "DEFENDANT'S CONVICTION FOR CONSPIRACY TO COMMIT MURDER, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, ADDUCED AGAINST HIM AT TRIAL, AND FURTHER WAS BASED UPON INSUFFICIENT EVIDENCE."

{¶ 3} On March 30, 2014, Catherine Martinez discovered the body of her neighbor, Thomas Whitson, inside his home. Law enforcement officers subsequently discovered that Whitson had been shot in the head. Additional investigation revealed that seven guns had been taken from Whitson's home.

{¶ 4} The next day, law enforcement officers encountered appellant, Whitson's grandson, while notifying family members of his death. The officers requested consent to search the premises where appellant had been staying. In the room where appellant had slept, along with two of his companions (Jordan Legg and Kyle Robinson aka "Ray Ray"), the officers discovered three of the guns that had been taken from Whitson's home. The officers then took appellant and his two companions into custody.

{¶ 5} When the officers began to question appellant, he denied being involved in his grandfather's shooting. After approximately forty-five minutes, however, appellant admitted that he shot and killed his grandfather. Appellant further informed the officers that they "would have had two bodies, but my dad wasn't there." Appellant related that he had planned, along with his two companions, to kill both his grandfather and his father.

{¶ 6} On April 4, 2014, a Pickaway County grand jury returned an indictment that charged appellant with multiple offenses arising out of his grandfather's death: (1) aggravated murder, in violation of R.C. 2903.01(A), with a firearm specification; (2) aggravated murder, in violation of R.C. 2903.01(B), with a firearm specification; (3) murder, in violation of R.C. 2903.02(A), with a firearm specification; (4) murder, in violation of R.C. 2903.02(B), with a firearm specification; (5) aggravated burglary, in violation of R.C. 2911.11(A)(1), with a firearm specification; (6) grand theft, in violation of R.C. 2913.02(A)(1), with a firearm specification; and (7) conspiracy to commit murder, in violation of R.C. 2923.01(A)(1).

{¶ 7} On August 11, 2014 and continuing through August 13, 2014, the trial court held a jury trial. The state introduced appellant's videotaped interview with the Pickaway County Sheriff's detectives in which he confessed to killing his grandfather and to plotting to kill his father. Before the interview began, the detectives advised appellant of his Miranda[1] rights, and appellant signed a Miranda rights waiver form. During the interview, Detective Rex Emrick told appellant: "[I]f you would tell us what happened now * * * you would feel better about it and get on down the road and get this behind you. Because it's got to be eating you up, I mean

[1] Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

it's got to be bothering you. Would you agree[?]" Appellant responded: "Ain't nothing bothering me." Detective Emrick inquired: "There ain't nothing bothering you?" Appellant stated: "There ain't nothing bothering me. Ain't nothing eating me up. I ain't got nothing else to say." Detective Emrick then stated:

> "Well, you know, then that pretty well tells the story there then about how you feel about people and whether you have any remorse or not. Do you understand that? I mean some people can be pretty cold-hearted. And if you don't feel any remorse for anything, then you're pretty cold-hearted, you know, but that's you, that's not me. You know what I mean?"

Appellant nodded affirmatively. Later, Detective Emrick informed appellant what the detective believed happened the night appellant shot his grandfather:

> "So when you went down there I don't think that you really went down to shoot him. I think that you went down there to get those guns, right? And it just went too far, is that right? Just went down there to get the guns. You didn't really want to kill him, right? Is that correct? That's not correct? You went down there to get the guns, right? You wanted that gun? The gun you always wanted, you went down to get that, right? And you got it. * * * * But I don't think that you went down there just to harm your grandpa that night. I think things got out of hand and it ended up—does that make sense?"

Appellant responded, "You need to stop thinking so much," and then continued, "You would have had two bodies, but my dad wasn't there." Detective Emrick asked, "So if your dad was there too you would have killed him too?" Appellant stated: "Yeah. He'd be dead too. [Same] fucking []way." Detective Emrick asked appellant if he "planned on going and getting him too," and appellant stated "Yeah." Appellant explained that "[t]he plan was to kill them both." Detective Strawser asked, "So you thought about this and planned this out?" Appellant explained: "The plan was to go in and direct them to lay down, and if they didn't, then they was going to get a beating. * * * * And then we was going to take and gather up all the guns * * * *

and then kill them. [sic]" Appellant stated that before he drove to his grandfather's house with "Ray Ray" and Jordan, they discussed the plan to kill both appellant's grandfather and father. Appellant stated that "Ray Ray" and Jordan "knew it all."

{¶ 8} After introducing appellant's confession, the state rested. Appellant did not present any evidence in his defense.

{¶ 9} On August 13, 2014, the jury found appellant guilty of all offenses charged in the indictment. On August 21, 2014, the trial court sentenced appellant. The court merged several offenses and sentenced appellant to serve life in prison without the possibility of parole for aggravated murder as charged in count one of the indictment, and to serve eleven years in prison for conspiracy to commit murder as charged in count seven of the indictment. The court additionally sentenced appellant to serve three years in prison for the firearm specification attached to count one. This appeal followed.

I

{¶ 10} In his first assignment of error, appellant argues that trial counsel did not provide effective assistance of counsel. In particular, appellant asserts that trial counsel was ineffective for failing to file a motion to suppress appellant's confession. Appellant recognizes that he signed a Miranda rights waiver form, but he claims that he subsequently invoked his right to remain silent. Appellant contends that before he confessed, he asserted his right to remain silent and to not incriminate himself by stating, "I ain't got nothing else to say."

A

INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD

{¶ 11} The Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has generally interpreted this provision to mean a criminal defendant is entitled to the "reasonably effective assistance" of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); McMann v. Richardson, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); State v. Creech, 188 Ohio App.3d 513, 2010–Ohio–2553, 936 N.E.2d 79, ¶39 (4th Dist.).

{¶ 12} To establish constitutionally ineffective assistance of counsel, a defendant must show (1) that his counsel's performance was deficient and (2) that the deficient performance prejudiced the defense and deprived him of a fair trial. Strickland, 466 U.S. at 687; State v. Powell, 132 Ohio St.3d 233, 2012–Ohio–2577, 971 N.E.2d 865, ¶85. "In order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation. To show prejudice, the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." State v. Conway, 109 Ohio St.3d 412, 2006–Ohio–2815, 848 N.E.2d 810, ¶95 (citations omitted); accord State v. Wesson, 137 Ohio St.3d 309, 2013–Ohio–4575, 999 N.E.2d 557, ¶81. "Failure to establish either element is fatal to the claim." State v. Jones, 4th Dist. Scioto No. 06CA3116, 2008–Ohio–968, ¶14. Therefore, if one element is dispositive, a court need not analyze both. State v. Madrigal, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000) (stating that a defendant's failure to satisfy one of the elements "negates a court's need to consider the other").

{¶ 13} When considering whether trial counsel's representation amounts to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. "A properly licensed attorney is presumed to execute his duties in an ethical and competent manner." State v. Taylor, 4th Dist. Washington No. 07CA11, 2008–Ohio–482, ¶10, citing State v. Smith, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Therefore, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were so serious that he or she failed to function as the counsel guaranteed by the Sixth Amendment. State v. Gondor, 112 Ohio St.3d 377, 2006–Ohio–6679, 860 N.E.2d 77, ¶62; State v. Hamblin, 37 Ohio St.3d 153, 156, 524 N.E.2d 476 (1988).

{¶ 14} To establish prejudice, a defendant must demonstrate that a reasonable probability exists that but for counsel's errors, the result of the trial would have been different. State v. Short, 129 Ohio St.3d 360, 2011–Ohio–3641, 952 N.E.2d 1121, ¶113; State v. White, 82 Ohio St.3d 16, 23, 693 N.E.2d 772 (1998); State v. Bradley, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus. Furthermore, courts may not simply assume the existence of prejudice, but must require the defendant to affirmatively establish prejudice. State v. Clark, 4th Dist. Pike No. 02CA684, 2003–Ohio–1707, ¶22; State v. Tucker, 4th Dist. Ross No. 01CA2592 (Apr. 2, 2002).

{¶ 15} Trial counsel's "'failure to file a suppression motion does not constitute per se ineffective assistance of counsel.'" Madrigal, 87 Ohio St.3d at 389, quoting Kimmelman v. Morrison, 477 U.S. 365, 384, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986); accord State v. Neyland,

139 Ohio St.3d 353, 2014-Ohio-1914, 12 N.E.3d 1112, ¶126. "To establish ineffective assistance of counsel for failure to file a motion to suppress, a defendant must prove that there was a basis to suppress the evidence in question." State v. Brown, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶65, citing State v. Adams, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶35. "'Where the record contains no evidence which would justify the filing of a motion to suppress, the appellant has not met his burden of proving that his attorney violated an essential duty by failing to file the motion.'" State v. Drummond, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶208, quoting State v. Gibson, 69 Ohio App.2d 91, 95, 430 N.E.2d 954 (8th Dist.1980); accord Neyland at ¶126. "'Even if some evidence in the record supports a motion to suppress, counsel is still considered effective if counsel could reasonably have decided that filing a motion to suppress would have been a futile act.'" State v. Moon, 8th Dist. Cuyahoga No. 101972, 2015-Ohio-1550, ¶28, quoting State v. Suarez, 12th Dist. Warren No. CA2014-02-035, 2015-Ohio-64, ¶13; see State v. Waters, 4th Dist. Vinton No. 13CA693, 2014-Ohio-3109, ¶12, quoting State v. Witherspoon, 8th Dist. Cuyahoga No. 94475, 2011–Ohio–704, ¶33 (stating that "'[t]he failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel and is not prejudicial'").

B

RIGHT TO REMAIN SILENT

{¶ 16} The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." In order to safeguard a suspect's Fifth Amendment privilege against self-incrimination, law enforcement officers seeking to perform a custodial interrogation must warn the suspect "that he has the right to

remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In the absence of these warnings, a suspect's incriminatory statements made during a custodial interrogation are inadmissible at trial. Michigan v. Mosley, 423 U.S. 96, 99-100, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) (footnote and citation omitted) ("[U]nless law enforcement officers give certain specified warnings before questioning a person in custody, and follow certain specified procedures during the course of any subsequent interrogation, any statement made by the person in custody cannot over his objection be admitted in evidence against him as a defendant at trial, even though the statement may in fact be wholly voluntary."); Miranda, 384 U.S. at 479 (stating that no evidence stemming from result of custodial interrogation may be used against defendant unless procedural safeguards employed); State v. Maxwell, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶113 (stating that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.").

{¶ 17} A suspect's incriminatory statements ordinarily are admissible if law enforcement officers gave the suspect Miranda warnings and if the suspect fails to unambiguously invoke the Fifth Amendment right against self-incrimination. Berghuis v. Thompkins, 560 U.S. 370, 388-389, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010). Once a suspect has received and understood the Miranda warnings, law enforcement officers may continue questioning "until and unless the suspect clearly [invokes the right to remain silent]." Davis v. United States, 512 U.S.

452, 461, 114 S.Ct. 2350, 129 L.Ed.2d 362; Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975); see Berghuis, 560 U.S. at 389 (explaining that officers need not obtain a waiver of Miranda rights before interrogating a suspect). "If * * * the right to remain silent is invoked at any point during questioning, further interrogation must cease." Berghuis at 388; Mosley (stating that once a suspect invokes the right to remain silent, officers must stop questioning); State v. Murphy, 91 Ohio St.3d 516, 520, 747 N.E.2d 765 (2001).

{¶ 18} In the case sub judice, neither appellant nor the state disputes that appellant received the Miranda warnings and that he executed a valid written waiver of his Miranda rights. Instead, the dispute focuses upon whether, during the interrogation, appellant clearly invoked his right to remain silent.

{¶ 19} "Invocation of the Miranda right to [remain silent] 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire [to cease all questioning].'" Davis v. United States, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), quoting McNeil v. Wisconsin, 501 U.S. 171, 178, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991); accord Berghuis, 560 U.S. at 381 (holding that analysis applicable to determining whether accused invoked right to counsel also applies when determining whether accused invoked right to remain silent); State v. Murphy, 91 Ohio St.3d 516, 520, 747 N.E.2d 765 (2001). "If the suspect's statement is not an unambiguous or unequivocal [invocation of the right to remain silent], the officers have no obligation to stop questioning him." Davis, 512 U.S. at 461. "If an accused makes a statement concerning the right to [remain silent] 'that is ambiguous or equivocal' or makes no statement, the police are not required to end the interrogation, or ask

questions to clarify whether the accused wanted to invoke his or her Miranda rights." Berghuis, 560 U.S. at 381, citing Davis, 512 U.S. at 461-462.

> "Although a suspect 'need not "speak with the discrimination of an Oxford don,"' Davis, 512 U.S. at 459, quoting id. at 476 (Souter, J., concurring), a suspect 'must articulate his or her desire to remain silent or cut off questioning "sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be" an invocation of the right to remain silent.' State v. Ross, 203 Wis.2d 66, 78, 552 N.W.2d 428, quoting Davis, 512 U.S. at 459."

Murphy, 91 Ohio St.3d at 520.

{¶ 20} In Berghuis, the court explained the rationale for requiring a suspect to unambiguously invoke the right to remain silence:

> "There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of Miranda rights results in an objective inquiry that 'avoid[s] difficulties of proof and * * * provide[s] guidance to officers' on how to proceed in the face of ambiguity. Davis, 512 U.S. at 458-459. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong.' Id. at 461. Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity. See id. at 459-461; Moran v. Burbine, 475 U.S. 412, 427, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). Treating an ambiguous or equivocal act, omission or statement as an invocation of Miranda rights 'might add marginally to Miranda's goal of dispelling the compulsion inherent in custodial interrogation.' Burbine, 475 U.S. at 425, 106 S.Ct. 1135. But 'as Miranda holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process.' Id. at 427; see Davis, supra at 460."

Berghuis, 560 U.S. at 381-382.

{¶ 21} Several cases illustrate when a defendant's statement, or lack thereof, is not an unambiguous invocation of the right to remain silent. In Berghuis, for example, the court determined that the defendant did not unambiguously invoke his right to remain silent when the

defendant never stated "that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney." Id. at 375. Before the officers interrogated the defendant, they advised the defendant of his Miranda rights. After the defendant refused to sign a Miranda rights waiver, the officers interrogated the defendant. During the approximately three-hour interrogation, the defendant "was '[l]argely' silent," but communicated by nodding his head or by giving "a few limited verbal responses * * * such as 'yeah,' 'no,' or 'I don't know.'" Id. at 375-376. Towards the end of the interview, the defendant made incriminating statements.

{¶ 22} The defendant subsequently sought to suppress his incriminating statements. He asserted that he had invoked his right to remain silent "by not saying anything for a sufficient period of time, so the interrogation should have 'cease[d]' before he made his inculpatory statements." Id. at 381.

{¶ 23} The court rejected the defendant's argument and stated that a suspect must unambiguously invoke the right to remain silent. The Berghuis court noted that the defendant "did not say that he wanted to remain silent or that he did not want to talk with the police." The court reasoned that if the defendant had "made either of these simple, unambiguous statements, he would have invoked his '"'right to cut off questioning.'"" Id. at 382, quoting Mosley, 423 U.S. at 103, quoting Miranda, 384 U.S. at 474. The court thus determined that the defendant did not invoke his right to remain silent.

{¶ 24} In Murphy, the Ohio Supreme Court held that the accused did not unambiguously invoke his right to remain silent by stating, "I'm ready to quit talking now and I'm ready to go home, too." 91 Ohio St.3d at 519, 521. The court recognized that "[t]he first part of his statement—'I'm ready to quit talking'—might well be read as an unambiguous invocation of the

right to remain silent if examined in isolation." Id. at 520. The court determined, however, that the defendant's words should not be considered "in isolation but in context." Id. at 520-521. The court stated that an examination of the defendant's entire statement, "I'm ready to quit talking and I'm ready to go home, too," could "be interpreted as meaning simply that appellant was ready to 'go home.'" Id. at 521. The court found it unclear "whether [appellant's] readiness to stop talking was independent of his desire to go home." Id. The court explained:

> "What appellant appears to have wanted was to be released. Talking to the police was a means to that end; he was trying to persuade them that he was innocent. Thus, his words did not necessarily mean that he wanted to stop talking, no matter what. If the police were not ready to let him go, he may well have wanted to keep trying to persuade them of his innocence."

Id.

{¶ 25} In State v. Rednour, 2nd Dist. Montgomery No. 25135, 2013-Ohio-2125, the court determined that the defendant did not unambiguously invoke his right to remain silent. In Rednour, approximately 35 minutes into the interview, the defendant stated that "he thought he should 'shut his mouth.'" Id. at ¶39. The defendant, however, continued talking freely after making this statement. Almost 15 minutes later, he stated that he was "'done talking,' because the officers had made up their minds," but he nonetheless continued freely speaking. Id. A few minutes later, the defendant invoked his right to counsel and his right to remain silent.

{¶ 26} The court determined that the defendant's statements that he thought he should "shut his mouth" and that he was "done talking" did not constitute an unambiguous invocation of the right to remain silent. Id. at ¶42. The court explained:

> "[The defendant's] statements indicate that his desire to stop speaking was based on the fact that the officers did not believe him and appeared to have made up their minds. The context of the discussions that occurred afterward indicate that [the defendant] continued to attempt to persuade the officers that he was innocent and had nothing to do with the murder."

Id.

{¶ 27} In State v. Williams, 3rd Dist. Allen No. 1-96-24 (Nov. 12, 1996), the court determined that the defendant did not unambiguously invoke his right to remain silent by stating, "That's all I have to say," and "I'm done." After the defendant's statements, the detective asked the defendant if that was how he wanted to "end this conversation." The defendant responded, "I don't know what else to say. You guys assume I did it."

{¶ 28} The appellate court first determined that the detectives' question regarding whether the defendant wished to stop the conversation "was a clarifying inquiry to [the defendant]." The court thus held that the inquiry was proper and did not violate the defendant's right to remain silent. The court explained that after the detective's clarifying question, the defendant did not invoke his right to remain silent but instead continued the conversation. The court concluded that the defendant did not intend to invoke his right to remain silent, but simply "affirm[ed] his innocence." The court explained: "He could have told the detectives that he did not wish to speak with them after [the detective] asked the [defendant] if he wished to end the interrogation at that point; the [defendant] could have remained silent; or the [defendant] could have stated that he was invoking his right to remain silent." Instead, "he continued to speak with the detectives, and moments later, asked the detectives the identity of the person who informed them of [defendant]'s involvement in the homicide and robbery. The [defendant]'s

tone of voice, physical mannerisms and subsequent conduct did not indicate that he wanted to invoke his right to remain silent."

{¶ 29} In State v. Griffith, 11th Dist. Trumbull No. 2001-T-0136, 2003-Ohio-6980, the court determined that the defendant did not unambiguously invoke his right to remain silent by stating, "I'm done," in response to an officer's question whether the defendant had any further information. Id. at ¶33. In rejecting the defendant's claim that he invoked his right to remain silence by stating, "I'm done," the court explained:

> "Such statement, taken in the context of the questioning, could have meant that appellant's previous answer was complete and that he had nothing to add to that answer. This statement did not clearly display appellant's intention to not answer subsequent questions. Hence, it did not invoke his Fifth Amendment right to cut off questioning. Again, we note that appellant continued to answer [the officer's] subsequent questions willingly and without hesitation. Due to this ambiguity and lack of clarity, [the officer] could continue to question appellant."

Id. at ¶34. See also State v. Gilbert, 7th Dist. Mahoning No. 08MA206, 2012-Ohio-1165,¶79 (concluding that the context of defendant's statement, "I don't want to talk about this," showed that the defendant did not unambiguously invoke the right to remain silent); State v. Strong, 1st Dist. Hamilton Nos. C–100484 and C–100486, 2011–Ohio–4947, ¶48 (determining that defendant's statement, "that's all I can let you know right there as far as yesterday," was ambiguous and did not invoke the right to cut off questioning).

{¶ 30} In State v. Jackson, 107 Ohio St.3d 300, 2006-Ohio-1, 839 N.E.2d 362, the defendant stated: "I don't even like talking about it man * * * cause you know what I mean, * * * I told you * * * what happened, man, * * * I mean, I don't even want to, you know what I'm saying, discuss no more about it, man, you know, 'cause it ain't gonna, you know, it ain't gonna to bring, ain't gonna bring the man back." Id. at ¶97. Later, the defendant stated: "I don't even want to talk about it no more, man. I'm, I'm, I'm through with it, man." Id. at ¶98. A few phrases later, the defendant stated: "And that's it. End of discussion, man." Id.

{¶ 31} The Jackson court recognized that considering the defendant's statements in isolation "might suggest that [the defendant] invoked his right to remain silent." Id. The court, however, considered the context of the defendant's statements and noted that before the defendant stated, "And that's it. End of discussion, man," he said, "I ain't mean to do it, I'm sorry I did it, * * * but, I was left, I had no choice, man." Id. The court thus determined that the defendant equivocated and did not clearly invoke his right to remain silent. Id. The court concluded, however, that the officers should have stopped questioning once the defendant stated, "And that's it. End of discussion, man." Id. at ¶99. The court nevertheless found that any error in admitting the defendant's subsequent statements was harmless. The court observed that the subsequent statements "did not add anything of consequence or implicate him further." Id.

{¶ 32} In State v. Miller, 7th Dist. Mahoning No. 13MA12, 2014-Ohio-2936, the court determined that the defendant unambiguously invoked his right to remain silent when he stated multiple times that he was "done talking." Throughout the interrogation, the defendant also stated: (1) "There's nothing else to talk about"; (2) "I ain't got nothing else to say"; (3) "I keep getting asked the same questions. I ain't got nothing else to say. I want to go home or go to

work. I just ain't got nothing else to say"; (4) "I told you everything I know. There ain't nothing else to talk about"; and (5) "[T]here's nothing else to talk about." Id. at ¶¶56-60. The court held that the defendant's statement, "I'm done talking" was a simple, unambiguous statement that he did not want to talk to the police. Id. at ¶ 61. The court noted that the defendant repeated this statement three times in a row and further noted that "nothing occurred prior to that statement or was attached to that statement to make it ambiguous." Id. at ¶62. The court additionally observed that "[a] detective not only ignored a clear invocation of the right to remain silent, but interrupted it and tried to talk over it. And, the detective and the captain actually instructed that he was not done talking." Id. at ¶65.

{¶ 33} In the case sub judice, after our review of the record we do not believe that the record supports a finding that appellant unambiguously invoked his right to remain silent when he answered the detective's inquiry as to whether anything was bothering him or "eating [him] up" by responding, "Ain't nothing bothering me. Ain't nothing eating me up. I ain't got nothing else to say." His response that he had nothing else to say, taken in context, indicates that he did not have anything else to say about whether something was bothering him or "eating [him] up." Appellant's response shows that he did not have an answer to the detective's question about what was bothering him or "eating [him] up." Appellant did not state that he was "done talking" to the detectives, or that he did not want to continue talking to the detectives. Appellant did not unequivocally indicate that he wished to remain silent and to cut off all further questioning. Rather, appellant's response suggested that he had nothing to say about what was bothering him because, according to appellant, nothing was bothering him. His response was not an unambiguous request to cease all further questioning. Consequently, the detectives were

not required to stop all questioning or even to attempt to clarify whether appellant wished to continue answering questions. Thus, if trial counsel had filed a motion to suppress appellant's confession, we do not believe that it would have had a reasonable probability of success. Trial counsel was not, therefore, ineffective for failing to file a motion to suppress appellant's confession.

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

II

{¶ 35} In his second assignment of error, appellant asserts that his conviction for conspiracy to commit murder was against the manifest weight of the evidence and based upon insufficient evidence. Appellant contends that the only evidence to support his conspiracy conviction is his statement, "You would have had two bodies, but my Dad wasn't there." Appellant argues that this statement is not sufficient to show that he engaged in a conspiracy to commit murder.

{¶ 36} Initially, we observe that although appellant combines the sufficiency and manifest weight of the evidence arguments, "sufficiency" and "manifest weight" present two distinct legal concepts. Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶23 (stating that "sufficiency of the evidence is quantitatively and qualitatively different from the weight of the evidence"); State v. Thompkins, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), syllabus. When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. Thompkins, 78 Ohio St.3d at 386 (stating

that "sufficiency is a test of adequacy"); State v. Jenks, 61 Ohio St.3d 259, 274, 574 N.E.2d 492 (1991). The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); Jenks, 61 Ohio St.3d at 273. Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." Thompkins, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶ 37} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. State v. Hill, 75 Ohio St.3d 195, 205, 661 N .E.2d 1068 (1996); State v. Grant, 67 Ohio St.3d 465, 477, 620 N.E.2d 50 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. State v. Tibbetts, 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001); State v. Treesh, 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 38} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." Thompkins, 78 Ohio St.3d at 387. When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence, and consider the credibility of witnesses. The reviewing court must bear in mind; however, that credibility generally is an issue for the trier of fact to resolve. State v. Issa, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001);

State v. Murphy, 4th Dist. Ross No. 07CA2953, 2008–Ohio–1744, ¶31. Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when resolving the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" Thompkins, 78 Ohio St.3d at 387, quoting State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 39} If the prosecution presented substantial evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. State v. Eley, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978), syllabus. A reviewing court should find a conviction against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the conviction.'" Thompkins, 78 Ohio St.3d at 387, quoting Martin, 20 Ohio App.3d at 175; State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 40} When an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily includes a finding that sufficient evidence supports the conviction. See State v. Pollitt, 4th Dist. Scioto No. 08CA3263, 2010–Ohio–2556, ¶15. "'Thus, a determination that [a] conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.'" State v. Lombardi, 9th Dist. Summit No. 22435, 2005–Ohio–4942, ¶9, quoting State v. Roberts, 9th Dist. Lorain No. 96CA006462 (Sept. 17, 1997). In the case sub judice, therefore, we first consider whether appellant's conviction is against the manifest weight of the evidence.

{¶ 41} R.C. 2923.01 sets forth the essential elements that constitute the crime of conspiracy to commit murder and states:

> (A) No person, with purpose to commit or to promote or facilitate the commission of * * * murder, * * * shall do either of the following:
> (1) With another person or persons, plan or aid in planning the commission of any of the specified offenses;
> (2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the commission of any of the specified offenses.

{¶ 42} R.C. 2923.01 does not require that all parties intend to commit the offense. "A conspiracy may be 'unilateral,' that is, one party who plans the underlying crime may still be guilty of conspiracy even if the other party does not act with the requisite culpable mental state but merely feigns agreement." State v. Fitzgerald, 9th Dist. Summit No. 23072, 2007–Ohio–701, ¶25 (citations omitted); accord State v. Lytle, 10th Dist. Franklin No. 13AP-866, 2015-Ohio-1133, ¶85.

{¶ 43} In the case at bar, we do not believe that appellant's conspiracy conviction is against the manifest weight of the evidence. The state introduced appellant's statement that he, along with "Ray Ray" and Jordan, planned to kill his father. Appellant stated that he, "Ray Ray," and Jordan discussed the plan before arriving at his grandfather's house the night of the shooting. Appellant thus admitted that he intended to kill his father and that he discussed the plan to kill his father with "Ray Ray" and Jordan. This evidence constitutes substantial competent and credible evidence that appellant, along with his two friends, planned to murder his father. Thus, the evidence amply supports appellant's conspiracy to commit murder conviction. Having concluded that appellant's conspiracy to commit murder conviction is not against the

manifest weight of the evidence, we also conclude that sufficient evidence supports his conviction.

{¶ 44} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway 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 Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

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

Hoover, P.J. & McFarland, A.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.