[Cite as *State v. Williams*, 2014-Ohio-2834.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Appellee

Court of Appeals Nos. L-13-1053
L-13-1054

Trial Court Nos. CR0201202673
CR0201203030

Melody Williams

Appellant

DECISION AND JUDGMENT

Decided: June 27, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

George J. Conklin, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals her conviction for aggravated murder, with a firearm specification, aggravated robbery, with a firearm specification, aggravated arson and two counts of tampering with evidence entered on a jury verdict in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} At 5:25 a.m. on July 4, 2011, Sylvania Township firefighters responded to an automated alarm from a residence on Inland Drive in the township. When the firefighters arrived, they found the brick ranch house locked. After cutting through a security gate, they broke down the front door. On entering, they went left toward a room fully involved in fire. The smoke was so thick they had to feel their way. In the process, they came upon a bed and felt a body.

{¶ 3} Firefighters carried the nude male outside the house and returned to extinguish multiple fires inside. Arson was thought to be the almost certain cause of the fires.

{¶ 4} The man carried from the house was its owner, L. C. Lyons. He was dead; not from the fire, but from a small caliber bullet in his head.

{¶ 5} Police began to interview Lyons' associates, beginning with a longtime former girlfriend who appeared at the scene as the investigation was beginning. The ex-girlfriend told police that Lyons never slept in the nude unless he was engaging in sexual activity. Investigators also learned that Lyons was a successful drug dealer who moved from the center city to the suburbs for security purposes. Police later found 144 grams of crack cocaine in a locked room in the house. A loaded handgun was found in a bedside table. Fire investigators also found two unignited green tipped "Diamond" brand matches.

{¶ 6} Missing from the house were any large sums of money and the jewelry Lyons was fond of. Notable among his collection was a custom made lion-head pendant

on a chain. Also, missing from the garage was the 2011 Nissan Altima Lyons normally drove.

{¶ 7} The Nissan was found three days later in central Toledo. The right floorboard of the car showed signs of burning. An empty container of "Our Family" brand charcoal lighter fluid and a box of green tipped "Diamond" brand matches were found inside. A fire investigator later testified that the fire on the floorboard would have consumed the interior of the car and its contents had the windows not been closed. As it was, the fire burned itself out when it used up the oxygen in the compartment.

{¶ 8} Investigators obtained the victim's telephone records. They noted a series of calls on the evening of July 3 from appellant, Melody Williams, including a text message from appellant to the victim asking that he pick her up at 10:30 that night.

{¶ 9} On July 6, a lion-head pendant matching the description of the one missing from the victim's home was sold at a Detroit, Michigan pawnshop. A fingerprint from the pawnshop records revealed that the seller of the pendant was appellant's ex-husband, Alfred Williams. The jeweler who designed the pendant later identified it as the one he custom made for L. C. Lyons.

{¶ 10} Police obtained telephone records and, in some instances, text messages from appellant's cell phone and those of several others. For July 6, they tracked Alfred Williams' journey from Toledo to the pawnshop in Detroit cell tower by cell tower. During most of the trip he was talking to a cell phone ordinarily used by appellant.

{¶ 11} Text messages between appellant and her niece on the day before the murder suggested that appellant was in dire need of money and would be willing to engage in prostitution to obtain funds. A text from appellant to her ex-husband the next day indicated that she now had funds, but needed his help with a matter she could not discuss on the telephone.

{¶ 12} Investigators contacted the distributor of "Our Family" charcoal lighter fluid and were informed that, in Toledo, the brand was sold only at a supermarket in the central city. On the shelf at that store, detectives saw the product in a display next to green tipped "Diamond" brand matches. The matches were sold in packages of eight. When police executed a search warrant of appellant's house and car, they found six packages of green tipped matches in the house and one in the car. Each box of matches was stamped with the same lot number of the one found in the victim's Nissan.

{¶ 13} Finally, a witness came forward. Appellant's cousin, Justin Westley, told police that in the early morning hours of July 4 appellant called him for help. According to Westley, appellant picked him up in a gray Nissan. She had a bag containing a ring, a watch, a bracelet and a lion-head pendant. She also had some cocaine.

{¶ 14} Westley told police that appellant asked him to sell the jewelry, except for the pendant. According to Westley, he accompanied appellant to the victim's house where she entered through the garage and was inside for approximately 15 minutes. When she returned to the car, she was moving rapidly and smelled of charcoal lighter fluid, Westley reported.

{¶ 15} Westley later testified that the two then drove to a spot at the mouth of the Maumee River, recommended by Westley, where they disposed of a small caliber automatic handgun. Returning to the central city, Westley reported he saw appellant spray charcoal lighter into the car. Westley claimed not to have actually seen the ignition of the fluid in the car.

{¶ 16} On October 11, 2012, appellant was named in a two count indictment charging her with aggravated murder and aggravated robbery, both with a firearm specification. A subsequent second indictment added a count of aggravated arson and two counts of tampering with evidence. Appellant pled not guilty on the original indictment and counsel was appointed.

{¶ 17} At the arraignment on the second indictment, appointed counsel moved to withdraw and appellant informed the court that she wished to proceed pro se. The court granted appointed counsel's motion to withdraw and appointed an experienced trial lawyer for the limited purpose of discussing with appellant the ramifications of self-representation. At a subsequent pretrial/arraignment, appellant reiterated her desire to represent herself and pled not guilty to the counts contained in the second indictment.

{¶ 18} The court held a hearing on appellant's self-representation, concluding that she was competent to represent herself. The court advised appellant of the dangers of self-representation; warnings the court repeated at nearly every subsequent proceeding.

{¶ 19} On March 4, 2013, the charges in both indictments were tried together to a jury. Appellant represented herself, with court-appointed standby counsel present. On

March 8, 2013, the jury found appellant guilty of all counts and specifications. The trial court accepted the verdict and sentenced appellant to a term of life imprisonment with parole possibility after 30 years for the aggravated murder, 10 years for the aggravated robbery, a mandatory three years for the merged firearm specifications, 10 years for aggravated arson and terms of three years each on the two tampering charges. All sentences were ordered served consecutively.

{¶ 20} Appellant's post-verdict motion for a mistrial, construed as a motion for a new trial, was denied.

{¶ 21} From these judgments of conviction, appellant now appeals. Appellant sets forth the following eight assignments of error:

> I. The trial court failed to protect the rights of the accused concerning her representation as a pro se defendant in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution[.]
>
> II. The appellant's convictions were not supported by a sufficiency of evidence [.]
>
> III. The defendant's convictions are against the manifest weight of the evidence [.]
>
> IV. The trial court erred in failing to grant defendant's Rule 29 motion to dismiss at the time of trial[.]
>
> V. Comments made by the prosecuting attorney in his closing argument amounted to prosecutorial misconduct and violated the

defendant's Fifth Amendment rights as guaranteed by the United States Constitution[.]

VI. The trial court erred in failing to grant the motion for new trial (mistrial) that was filed post-trial by the defendant[.]

VII. The cumulative effect of the errors committed by the trial court violated the defendant's right to a fair trial and her constitutional rights to due process, the right to confront evidence and the right to be free from arbitrary, cruel and unusual punishment in contradiction to the U.S. Constitution, Amendments V, VI, VII, IX and XIV and the privileges granted in the Ohio Constitution.

VIII. The trial court erred in imposing maximum sentences and consecutive sentences in violation of the Eight Amendment to the United States Constitution and the guidelines under the Ohio Revised Code[.]

I. Self-Representation

{¶ 22} In her first assignment of error, appellant asserts that the trial court was deficient in its performance relating to appellant's decision to represent herself at trial. Appellant maintains 1) the court failed to adequately determine appellant's competency to represent herself, 2) the court provided an insufficient examination of appellant with respect to her rights and duties as a pro se litigant and 3) the court failed to adequately provide what was necessary for appellant to represent herself at trial.

{¶ 23} The Sixth Amendment guarantees not only that a criminal defendant be afforded the right to counsel, but a corollary "independent constitutional right of self-representation." *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 299 (1976), paragraph one of the syllabus. When a defendant voluntarily, knowingly and intelligently elects to do so, the defendant may proceed to defend himself or herself without counsel. *Id.*, citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

{¶ 24} The right to waive counsel and proceed pro se is not absolute. A court may reject a defendant's request for self-representation if the request is untimely, *see Robards v. Rees*, 789 F.2d 379, 384 (6th Cir.1986), or if the court is not convinced that the defendant is competent to waive counsel. *State v. Watson*, 132 Ohio App.3d 57, 63, 724 N.E.2d 469 (8th Dist.1998). "The competency standard for waiving the right to counsel is the same as that applicable in determining competency to stand trial: whether the defendant has a rational understanding of the proceedings against him or her." *Id.*, citing *Godinez v. Moran*, 509 U.S. 389, 400-402, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993).

{¶ 25} Once the court is satisfied that a defendant is competent to waive representation, the court must make sufficient inquiry to determine whether a defendant fully understands and intelligently relinquishes the right. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144, ¶ 89, citing *Gibson* at paragraph two of the syllabus. *See also* Crim.R. 44(A). During such inquiry, the court must "adequately explain the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses, mitigation, or other facts essential to a

broad understanding of the whole matter." *Id.* at ¶ 91, quoting *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, ¶ 43. "Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing." Crim.R. 44(C).

{¶ 26} In determining the sufficiency of the court's inquiry, a reviewing court considers the totality of the circumstances, including the background, experience and conduct of the accused. The court should determine whether the defendant was advised of the dangers and disadvantages of self-representation. *State v. Julian*, 6th Dist. Williams No. WM-06-009, 2007-Ohio-3568, ¶ 55.

{¶ 27} In this matter, appellant first suggests that the trial court should not have found appellant competent to waive counsel without a competency hearing. Citing *State v. Were*, 94 Ohio St.3d 173, 2002-Ohio-481, 761 N.E.2d 591, appellant maintains that a competency hearing is constitutionally required whenever there is sufficient indicia to call into doubt a defendant's competency. At a minimum, appellant insists, the court should have ordered a competency evaluation.

{¶ 28} The indicia of incompetency appellant puts forth are not persuasive. Appellant cites a "previous mental history and the use of psychotropic drugs," but the reference is to a period of situational depression years prior to the instant matter. Appellant also references her "suspicions of conspiracy" attached to various public functionaries as circumstances that should have triggered a trial court inquiry. A fair

reading of the record reveals that such suspicions were not as egregious as appellant now contends.

{¶ 29} We have thoroughly reviewed the transcripts of all of these proceedings and fail to find indicia that appellant lacked the ability to understand the proceedings against her. Absent such indicia, we cannot fault the trial court for concluding she was competent to waive representation by counsel.

{¶ 30} With respect to the waiver colloquy itself, on multiple occasions the court inquired of appellant's education and background, advised her of the charges against her and related the potential penalties should she be convicted of those charges. The court also advised appellant that, should she represent herself at trial, she would be held to the same legal standards and rules as any advocate before the bar. The court warned appellant at length that self-representation was fraught with peril and contained a high risk of failure. Appellant's response to each of these inquiries was that she understood the gravity of the situation, believed she could learn and follow the applicable court rules and appreciated and accepted the risk of self-representation.

{¶ 31} After the first such colloquy, the court appointed an experienced trial lawyer to meet privately with appellant to discuss the perils of self-representation with respect to her specific case. The following week, after such consultation, the court repeated the entire colloquy. Again, appellant said she understood the charges and the consequences and wished to represent herself. The court repeated some version of these

waiver colloquies at nearly every proceeding that followed, including just prior to jury voir dire. In each instance, appellant indicated her desire to represent herself.

{¶ 32} On this record, we can only conclude that the trial court properly exercised its responsibility to inform and caution appellant. Moreover, the record supports the court's finding that appellant's election to waive counsel and proceed pro se was knowingly, intelligently and voluntarily made.

{¶ 33} In her remaining argument under this assignment of error, appellant suggests that the trial court failed to provide her with the resources and materials necessary to represent herself. The state responds that the court was amply accommodating to appellant given the restraints dictated by her incarceration.

{¶ 34} Appellant has provided us with no authority as to the measure of a court's responsibility to aid a self-represented criminal defendant. When appellant elected to represent herself she stated that she understood she would be held to the same legal standards as any advocate in the legal system. Here, when she asked for supplies, they were provided. The court appointed stand-by/advisory counsel to assist her in legal research and advise her on legal matters. Beyond this, the strictures imposed upon an incarcerated pro se defendant are dictated by security. Appellant knew, or should have known, from the outset that this would in some ways inhibit her actions. This, presumably, was part of appellant's calculus in weighing the decision to represent herself. She has little room to now complain. In our view, considering the entire record, the trial

court was accommodating to appellant beyond that which was necessary. This argument is without merit.

{¶ 35} Accordingly, appellant's first assignment of error is not well-taken.

II. Weight/Sufficiency of Evidence

{¶ 36} In her second assignment of error, appellant asserts there was insufficient evidence to support her conviction. In her third assignment of error, appellant maintains the verdict of the jury was against the manifest weight of the evidence. In her fourth assignment, appellant complains that the trial court erred in denying her Crim.R. 29 motion for a judgment of acquittal. We shall discuss these assignments error together.

{¶ 37} In a criminal appeal, a verdict may be overturned if it is either against the manifest weight of the evidence or because there is an insufficiency of evidence. In the former, the appeals court acts as a "thirteenth juror" to determine whether the trier of fact lost its way and created such a manifest miscarriage of justice that the conviction must be overturned and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541(1997). In the latter, the court must determine whether the evidence submitted is legally sufficient to support all of the elements of the offense charged. *Id*. at 386-387. Specifically, we must determine whether the state has presented evidence which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The test is, viewing the evidence in a light most favorable to the prosecution, could any rational trier of fact have found the essential elements of the crime proven beyond a reasonable doubt. *Id.* at 390 (Cook, J., concurring); *State v. Jenks*, 61

Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. *See also State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978); *State v. Barnes*, 25 Ohio St.3d 203, 495 N.E.2d 922 (1986).

{¶ 38} In a motion for acquittal pursuant to Crim.R. 29(A), we apply the same standard as for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 39} R.C. 2903.01(B) provides, in material part:

> No person shall purposely cause the death of another * * * while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, * * * aggravated arson, arson, aggravated robbery * * * trespass in a habitation when a person is present or likely to be present, terrorism, or escape.

{¶ 40} R.C. 2911.11(A) provides:

> (A) No person, by force, stealth, or deception, shall trespass in an occupied structure * * * when another person other than an accomplice of the offender is present, with purpose to commit in the structure * * * any criminal offense, if any of the following apply:
>
> (1) The offender inflicts, or attempts or threatens to inflict physical harm on another;
>
> (2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

{¶ 41} Appellant argues there is no direct or scientific evidence connecting her to the crimes, only the testimony of "professional snitch" Justin Westley. This is not entirely true. There was, in fact, substantial forensic evidence connecting appellant to the murder.

{¶ 42} First, there is little doubt that L. C. Lyons was murdered. The autopsy found a small caliber bullet, likely a .22, in the victim's brain. An examination of his lungs revealed no soot or searing as might be expected to be found had he been breathing once the fire started. It is reasonable to believe that the fire in the victim's house was set to conceal evidence of the murder. Jewelry, the victim's car and likely some amount of cash were taken. These facts support the elements necessary to prove aggravated murder, in violation of R.C. 2903.01(B), and aggravated robbery, in violation of R.C. 2911.11(A), and the firearm specifications attached to each count.

{¶ 43} In material part, R.C. 2909.02(A)(1) provides:

> (A) No person, by means of fire or explosion, shall knowingly do any of the following:
>
> (1) Create a substantial risk of serious physical harm to any person other than the offender * * *.

{¶ 44} Even though Lyons was dead when the fire began, setting a fire in a residential structure believed to be occupied creates a substantial risk of serious physical harm to firefighters who must enter such a structure. This is aggravated arson, in

violation of R.C. 2909.02(A)(1). *See State v. Keough*, 6th Dist. Lucas No. L-08-1073, 2009-Ohio-6260, ¶ 20.

{¶ 45} There seems to be little dispute that the elements of the offenses have been shown. The only question remaining is the identity of the offender. The state introduced text messages from appellant to a niece sent the day prior to the murder in which appellant pled such poverty that she indicated she would be willing to commit prostitution to get money. Another text message from appellant to the victim requested that he pick her up that evening. The day after the murder appellant texted her ex-husband, indicating that she had some money for him and asking him to do something which she did not wish to discuss on the telephone.

{¶ 46} A one-of-a-kind pendant identified as belonging to the victim was sold in Detroit by a man whose fingerprint matched appellant's ex-husband. The state introduced cell phone tower records from that day by which police traced the ex-husband's route from Toledo to the Detroit pawnshop, all the while engaging in an a series of ongoing cell phone calls with appellant, according to the records introduced.

{¶ 47} The matches at the scene of the murder, in the stolen Nissan, seized in a search of appellant's home and found in her car were green tipped "Diamond" brand matches. "Diamond" brand green tipped matches were found in eight pack packages, displayed on a shelf next to "Our Family" brand charcoal lighter fluid in a central city store near appellant's home, the only store in Toledo carrying that brand. An empty container of "Our Family" charcoal lighter fluid was found in the front seat of the

abandoned Nissan stolen from the victim. Also in the car was a box of green tipped "Diamond" brand matches, the lot number of which was the same as the six packages found in appellant's home and the one package found in her car.

{¶ 48} This is a massive amount of circumstantial evidence linking appellant to the victim, to the crime scene and to the property stolen from the Sylvania Township home.

{¶ 49} Finally, there is the testimony of Justin Westley. Westley's testimony, if believed, places appellant in the stolen Nissan with a small caliber handgun the night of the killing. Westley puts appellant in the murder victim's house and emerging smelling of charcoal lighter fluid. This is testimony, if believed, by which a reasonable trier of fact could infer that appellant started the fire in the victim's house.

{¶ 50} Concerning the tampering with evidence charges, R.C. 2921.12(A)(1) provides:

> (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
>
> (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation * * *.

{¶ 51} Justin Westley testified that he drove with appellant to a commercial shipping area where he saw appellant throw a small handgun into the river. This is

testimony which, if believed, shows that appellant concealed the firearm to impair the investigation of the murder and arson. This establishes the elements of tampering with evidence, a violation of R.C. 2921.12(A)(1).

{¶ 52} Westley says he was also with appellant when he saw her douse the front seat area of the Nissan with charcoal lighter fluid. This is testimony, if believed, by which a reasonable trier of fact could infer that appellant altered or destroyed the Nissan to impair the investigation of the murder and arson, establishing the second count of tampering with evidence.

{¶ 53} On review, we conclude that the prosecution presented evidence which, if believed, established all of the elements of all of the offenses for which appellant was convicted. Consequently, there was sufficient evidence to support the verdict and the trial court did not err in denying appellant's Crim.R. 29(A) motion for a judgment of acquittal. Accordingly appellant's second and fourth assignments of error are not well-taken.

{¶ 54} With respect to the manifest weight of the evidence, we have reviewed the entire record of the trial and find nothing to suggest that the jury lost its way or that the verdict represents a manifest miscarriage of justice. Accordingly, appellant's third assignment of error is not well-taken.

III. Prosecutorial Misconduct

{¶ 55} During closing argument, the prosecutor, discussing the testimony of Justin Westley, said: "He told you something else about the defendant. From that stand he told

you he wasn't surprised. I asked him, were you surprised to see her with a gun? I wasn't surprised, she always had a gun." Over appellant's objection, the prosecutor continued, "She always had a gun * * * and she asked him about the methods of burning a car." Appellant's further objection to these statements was overruled. On appeal, in her fifth assignment of error, appellant asserts that these, and other unspecified statements during closing, were an improper injection of the prosecutor's personal opinion or a mischaracterization of the testimony and denied her a fair trial.

{¶ 56} Prosecutors, in general, are permitted considerable latitude in closing argument. *State v. Ballew*, 76 Ohio St.3d 244, 255, 667 N.E.2d 369 (1996). During closing arguments, a prosecutor may freely comment on "what the evidence has shown and what reasonable inferences may be drawn therefrom." *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990). Prosecutors, however, may not invade the realm of the jury by expressing their personal beliefs regarding guilt and credibility. *State v. Smith*, 14 Ohio St.3d 13, 14, 470 N.E.2d 883 (1984).

{¶ 57} We find appellant's assertion that these comments constituted the prosecutor's personal opinion perplexing. What the prosecutor said is a fair and, from our review, reasonably accurate summation of portions of Justin Westley's testimony. Appellant's assertion otherwise is without merit. Accordingly, appellant's fifth assignment of error is not well-taken.

IV. Motion for a New Trial

{¶ 58} After the verdict, on the day of sentencing, appellant moved for a "mistrial." Appellant alleged juror misconduct, specifically that a juror failed to disclose during voir dire that he was a member of Toledo City Council and contradictorily testified he lived in Oregon, Ohio. Appellant claimed the same juror failed to disclose a felony weapons conviction and a personal relationship with the prosecutor and the prosecutor's wife, who is clerk of the Toledo Municipal Court. Appellant also claimed that the prosecutor's wife somehow manipulated the jury pool from her position as clerk.

{¶ 59} The court, with consent of the parties, construed appellant's motion to be a motion for a new trial pursuant to Crim.R. 33(A) and held a hearing.

{¶ 60} During the hearing, the juror at issue was called and testified that he had disclosed that he was a member of city council and that he had never claimed to be a resident of Oregon, Ohio. The juror also testified that he had reported that he was a "facebook friend" with the prosecutor and his wife, but had no personal relationship with the couple beyond belonging to the same political party and being elected officials. The juror testified that he had never had any conversations with the prosecutor about this case or any other. The juror testified that as a teenager he had been convicted of a misdemeanor concealed carry offense, but simply forgot to disclose it during juror voir dire.

{¶ 61} The court ordered a transcript of the juror's voir dire testimony and found that it supported the juror's assertion that he had disclosed that he was a member of

council and that he was a "facebook friend" with the prosecutor. At no point in the transcript did the juror claim to live in Oregon, Ohio. The court took note that the clerk of the Toledo Municipal Court had no involvement in the selection of potential jurors in Lucas County. The court found the juror's failure to disclose the misdemeanor concealed carry conviction was unintentional. The court subsequently issued a 13 page decision denying appellant's Crim.R. 33(A)(2) motion. In her sixth assignment of error, appellant maintains this decision was erroneous.

{¶ 62} Trial courts have broad discretion concerning matters of juror misconduct and potential bias. *State v. Herring*, 94 Ohio St.3d 246, 259, 762 N.E.2d 940 (2002), quoting *State v. Phillips*, 74 Ohio St.3d 72, 88-89, 656 N.E.2d 643 (1995). Accordingly, an appellate court reviews the denial of a motion for a new trial for an abuse of discretion. *State v. Schiebel*, 55 Ohio St.3d 71, 564 N.E.2d 54 (1990), paragraph one of the syllabus. An abuse of discretion implies that the trial court's attitude was "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 63} In this matter, the trial court's decision to deny appellant's motion for a new trial was well within the court's discretion. Most of the factual assertions of appellant were verifiably untrue and the court's finding that the juror's failure to disclose an early conviction was inadvertent was reasonable. Accordingly, appellant's sixth assignment of error is not well-taken.

V. Cumulative Errors

{¶ 64} Appellant, in her seventh assignment of error, maintains that the cumulative effects of the errors stated before constitute reversible error even if the individual errors asserted are harmless. Since we have found no error, harmless or otherwise, this assignment of error is inapplicable. Appellant's seventh assignment of error is not well-taken.

VI. Sentencing

{¶ 65} In her remaining assignment of error, appellant contends that the trial court's decision to impose maximum consecutive sentences was unwarranted and constituted cruel and unusual punishment in violation of the Eighth Amendment.

{¶ 66} An appeals court hearing a statutory felony sentence appeal must review the record, including the findings underlying the sentence. The appellate court may increase, reduce, modify, or vacate and remand a disputed sentence if it clearly and convincingly finds either of the following:

> (a) That the record does not support the sentencing court's findings under [R.C. 2929.13(B) or (D)], [R.C. 2929.14(B)(2)(e) or (C)(4)], or [R.C. 2929.20(I)], whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law. R.C. 2953.08(G)(2).

{¶ 67} The standard of review for an appeal of a sentence is not abuse of discretion. *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11. If

a sentencing court is statutorily required to make findings or state findings on the record concerning the imposition of a sentence and fails to do so, the appeals court is directed to remand the case and instruct the sentencing court to state, on the record, the required findings. R.C. 2953.08(G)(1).

{¶ 68} Consecutive sentences may be imposed if the sentencing court finds that 1) consecutive service of sentences is necessary to protect the public from future crime or, to punish the offender and 2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public and, inter alia, 3) "[a]t least two 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." R.C. 2929.14(C)(4)(b). The trial court made these findings. The trial court's findings are supported by the record.

{¶ 69} R.C. 2929.03(A) mandates that one found guilty of aggravated murder, without an aggravating circumstances specification, is to be sentenced to life imprisonment either without parole, or with parole eligibility after 20, 25 or 30 years. Appellant was sentenced to life imprisonment with parole eligibility after 30 years. This sentence is not contrary to law. The three year mandatory sentence for the firearm specification is not contrary to law. R.C. 2929.14(B)(1)(a).

{¶ 70} Aggravated robbery, in violation of R.C. 2911.01(A)(3), and aggravated arson, in violation of R.C. 2909.02(A)(1) and (B)(2), are first degree felonies. Sentencing options for a felony of the first degree under former R.C. 2929.14(A)(1) were in one year increments from three to ten years.[1] Appellant's ten-year sentences are not contrary to law.

{¶ 71} Tampering with evidence, in violation of R.C. 2921.12(A)(1) and (B) is a third degree felony. Former R.C. 2929.14(A)(3) did not require imprisonment, but permitted a sentencing court to impose sentences of one to five years imprisonment in one year increments. The court was required to impose the shortest term unless it found that a minimum sentence would demean the seriousness of the offender's conduct or not adequately protect the public from future crime by the offender or others.[2] In its judgment of conviction, the court made the requisite finding under the former R.C. 2929.14(B)(2) and sentenced appellant to 36-months imprisonment for each tampering with evidence count. The record supports the trial court's findings. These sentences are not contrary to law.

{¶ 72} The sentences imposed in this matter were within the sentencing ranges provided by law and accompanied by all required findings. The findings are supported

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[1] R.C. 2929.14 was one of the statutes amended by 2011 Am.Sub.H.B. No. 86, effective September 30, 2011, which was after the commission of appellant's offense. H.B. 86 added an option for an 11-year term of imprisonment.

[2] After 2011 Am.Sub.H.B. No. 86, R.C. 2929.14(A)(3)(b) permits sentences of between "nine, twelve, eighteen, twenty-four, thirty, or thirty-six months" without any finding necessary to impose more than a minimum sentence for an ordinary third degree felony.

by the record. Consequently, for the sentences imposed in this matter, there are no grounds for this court to disturb the sentencing court's decision.

{¶ 73} With respect to whether these sentences constitute cruel and unusual punishment, appellant makes no independent argument nor cites any authority on the issue. Our rules require that an appellant include in his or her brief:

> An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. App.R. 16(A)(7)

{¶ 74} An appellate court may disregard an assignment or portion of an assignment of error if an appellant fails to cite legal authority in support of an argument. App.R. 12(A)(2); *Village of Ottawa Hills v. Afjeh*, 6th Dist. Lucas No. L-04-1297, 2006-Ohio-2618, ¶ 67. As a result, we decline to consider appellant's Eighth Amendment question. Accordingly, appellant's eighth assignment of error is not well-taken.

{¶ 75} On consideration, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.