

[Cite as *State v. Ramsey*, 2004-Ohio-3618.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83026

STATE OF OHIO,

:

:

:

JOURNAL ENTRY

Plaintiff-Appellee

:

:

AND

v.

:

:

OPINION

TERRAND RAMSEY,

:

:

:

Defendant-Appellant

:

DATE OF ANNOUNCEMENT  
OF DECISION:

JULY 8, 2004

CHARACTER OF PROCEEDING:

Criminal appeal from  
Common Pleas Court,  
Case No. CR-426164.

JUDGMENT:

AFFIRMED.

DATE OF JOURNALIZATION:

APPEARANCES:

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[Cite as *State v. Ramsey*, 2004-Ohio-3618.]

TIMOTHY E. McMONAGLE, J.:

{¶1} Defendant-appellant, Terrand Ramsey, appeals from the judgment of the Common Pleas Court, rendered after a jury verdict, finding him guilty of murder, aggravated murder and aggravated robbery, and sentencing him to life in prison with parole eligibility after 33 years. Finding no merit to the appeal, we affirm.

{¶2} On January 19, 2002, as Calvin Hill and Ramsey rode around in Hill's car drinking and smoking marijuana, Hill suggested they rob someone. The men went to Hill's apartment, where they dressed themselves in black tee shirts, black pants, black hooded sweatshirts and one glove each. Each man also procured a gun.

{¶3} Back in the car, Hill and Ramsey drove around, looking for a place to rob. Eventually, the men chose the Madison 89 Deli. Prior to entering the store, Ramsey asked Hill to promise that he would not shoot anyone.

{¶4} They entered the store, in which two clerks were working. Ramsey put his pistol next to the head of one of the clerks and ordered him to the floor, while Hill spoke with the other clerk, named Johnny Yahya, who was behind the counter. Although Yahya attempted to comply with Hill's order that he give him the money from the register, the register jammed and he could not get it open. After noticing that Yahya and Hill were arguing, Ramsey hit Yahya in the face with his pistol with so much force that pistol pieces scattered across the floor and Yahya was knocked to the floor. Hill then shot Yahya in the leg.

{¶5} Hill and Ramsey rummaged behind the counter and then left the store. Before Ramsey was completely out of the store, however, he turned around, came back in the store and began gesturing wildly. Hill then came back in the store and told Yahya that if he did not open the

register by the time he counted to three, he would shoot him. Hill counted to three, shot Yahya in the neck and then he and Ramsey ran out of the store. Yahya died almost immediately.

{¶6} As Hill and Ramsey ran away through a nearby alley, they threw their sweatshirts and Ramsey's broken pistol in an empty lot. Hill also hid his revolver under a rock in the lot. The items were subsequently recovered by the police. Hill and Ramsey then went back to Hill's apartment, where Hill told his brother Andre what had happened.

#### SUFFICIENCY OF THE EVIDENCE

{¶7} In his first assignment of error, Ramsey contends that the evidence was insufficient to support his conviction for aggravated murder.<sup>1</sup>

{¶8} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the State has met its burden of production at trial. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390. On review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶9} R.C. 2903.01, regarding aggravated murder, provides that "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 robbery \*\*\*." "Purposely" is a "specific intention to cause a certain result." R.C. 2901.22(A).

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<sup>1</sup>Ramsey does not contest his convictions for murder and aggravated robbery.

{¶10} It was undisputed at trial that Calvin Hill, not Ramsey, shot and killed Johnny Yahya. The State's theory was that Ramsey was guilty of aggravated murder as an aider and abettor to Hill's actions under R.C. 2923.03, which provides that "no person, acting with the kind of culpability required for the commission of an offense, shall \*\*\* aid or abet another in committing the offense."

In Ohio, purpose to kill is an essential element of the crime of aggravated murder for both the principal offender and an aider and abettor. *State v. Scott* (1980), 61 Ohio St.2d 155, 166, citing *State v. Lockett* (1976), 49 Ohio St.2d 48, 58-59. Thus, under Ohio law, a defendant's purpose to kill must be proved as an essential element of the crime of aggravated murder even where the prosecution proceeds on an aider and abetter theory. *Clark v. Jago* (C.A.6, 1982), 676 F.2d 1099, 1104.

{¶11} Here, State's Exhibit 9, a videotape of the robbery/murder obtained from the surveillance cameras in the Madison 89 Deli, was shown to the jury. The videotape (which did not contain any audio) showed Ramsey and Hill leaving the store; Ramsey coming back into the store, gesturing wildly with his arms and apparently pointing at Yahya; and Calvin Hill walking back into the store, pointing his revolver at Yahya and shooting him. The State did not present any direct testimony that Ramsey either knew that Hill intended to shoot Yahya or that Ramsey intended that Yahya be killed. Instead, the State argued that the jury could infer Ramsey's separate intent to kill from his actions on the tape.

{¶12} Ramsey argues that this circumstantial evidence was insufficient, however, to support the inference that he was ordering Hill to kill Yahya or that he had any intent to cause Yahya's death because "the State's desired inference is not the most probable or natural inference one can make from the fact that the tape shows Mr. Ramsey moving his arms." According to Ramsey, the more natural inference to be drawn from his gestures would be that he was pointing at Yahya because he

was angry that Hill had broken his promise not to shoot anyone. Moreover, Ramsey asserts, because the videotape did not contain any audio, any inference from his gestures that he was pointing at Yahya so Hill would shoot him required the jury to stack an inference upon an inference; i.e., that Ramsey was pointing at Yahya *and* that he was telling Hill to shoot him. Ramsey contends that the testimony of James Meade, the other clerk who was in the store when the robbery occurred, disproved this evidence of intent because Meade testified only that Ramsey told him to “hit the floor; don’t move or I’ll shoot you,” but did not testify that Ramsey ever told Hill to shoot Yahya.

{¶13} We are not persuaded. As set forth above, the test for sufficiency of the evidence is not whether the evidence is to be believed, but whether, if believed, the evidence would support a conviction. Here, an inference that Ramsey was gesturing wildly and pointing at Yahya because he wanted Hill to kill him is just as reasonable as an inference that he was gesturing at Yahya because he was angry that Hill had shot him. Thus, if the inference were accepted as true, Ramsey’s wild gestures on the videotape were sufficient to establish his separate intent to kill Yahya. We also reject Ramsey’s assertion that an inference that he was gesturing wildly and pointing at Yahya so Hill would shoot him requires impermissibly stacking another inference that Ramsey told Hill to shoot Yahya. A trier of fact may not draw “an inference based \*\*\* entirely upon another inference, unsupported by any additional fact or another inference from other facts[.]” *State v. Cowans* (1999), 87 Ohio St.3d 68. However, “an inference based in part upon another inference and in part upon facts is a parallel inference, and if reasonable, may be indulged by a jury.” *Motorists Mut. Ins. Co. v. Hamilton Twp. Trustees* (1986), 28 Ohio St.3d 13, at the syllabus. “Because reasonable inferences drawn from the evidence are an essential element of the deductive reasoning process by which most successful claims are proven, the rule against stacking inferences must be strictly limited to

inferences drawn exclusively from other inferences.” *Donaldson v. N. Trading Co.* (1992), 82 Ohio App.3d 476, 481.

{¶14} Despite Ramsey’s argument, it was not necessary for the jury to also infer that Ramsey told Hill to shoot Yahya in order to believe that Ramsey wanted Hill to shoot him. If the jury believed that Ramsey was wildly gesturing and pointing at Yahya, it could have believed that he was telling Hill, through his gestures alone, to kill Yahya.

{¶15} Moreover, it is well settled that “a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts, and intent can be determined from the surrounding facts and circumstances.” *State v. Carter* (1995), 72 Ohio St.3d 545, 554 (citations omitted). Here, Ramsey entered into a plan with Hill to commit a robbery and agreed to the use of deadly weapons to commit the robbery. As stated by the Ohio Supreme Court in a case involving the armed robbery and death of a gas station attendant:

{¶16} “Our examination of the record in the instant case establishes that appellant participated in the planning and commission of the robbery, and also acquiesced in the employment of a deadly weapon to accomplish this crime. Under these circumstances appellant must have realized that the victim’s life would be endangered by the manner and means of performing the act conspired, and accordingly, appellant is bound by the consequences naturally resulting from the furtherance of the conspiracy to commit the aggravated robbery. We therefore hold that the jury had before it sufficient evidence from which to find that appellant possessed a purposeful intent to kill.” *State v. Clark* (1978), 55 Ohio St.2d 257, 259-260.

{¶17} Finally, we note that Ramsey’s argument that the testimony of James Meade “disproved” the State’s circumstantial evidence of intent because Meade never testified that Ramsey told Hill to shoot Yahya goes to the weight of the evidence, not the sufficiency of the evidence.

{¶18} Construing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence from which the jury could have concluded that Ramsey had a specific intention, separate from that of Calvin Hill, to kill Johnny Yahya.

{¶19} Appellant's first assignment of error is overruled.

#### JURY INSTRUCTION REGARDING SPECIFIC INTENT

{¶20} In his second assignment of error, Ramsey contends that the jury instructions were incomplete.

{¶21} As an initial matter, we note that Ramsey did not object to the jury instructions at trial and, therefore, waived all but plain error. *State v. Underwood* (1983), 3 Ohio St.3d 12, syllabus.

{¶22} Ramsey contends that the trial court committed plain error because it did not instruct the jury regarding all of the elements of aggravated murder. See *State v. Bridgeman* (1977), 51 Ohio App.2d 105 (failure to instruct jury on all elements and specifications of the crime charged is plain error). Specifically, Ramsey asserts that the jury instructions did not inform the jury that to be found guilty of aggravated murder as an aider and abettor, he must have had his own specific intent, apart from that of Calvin Hill, to kill Johnny Yahya. According to Ramsey, the jury instructions "never distinguished [his] culpable mental state from that of Mr. Hill" and, therefore, deprived him of his right to due process under the Fourteenth Amendment. We disagree.

{¶23} Counts one and two charged Ramsey with aggravated murder. In instructing the jury regarding count one, the trial court stated:

{¶24} "The defendant, Terrand Ramsey, is charged in Count 1 of the indictment with the aggravated murder, in violation of Revised Code 2903.01, together with two firearm specifications and one felony murder specification. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the 19<sup>th</sup> day of January 2002, and in Cuyahoga County, Ohio, the



defendant purposely and with prior calculation and design caused the death of another, to wit, Glaheb Yahya.

{¶25} “Purposely. Purpose is an essential element of the offense of aggravated murder.

{¶26} “Result. *A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to cause the death of another.* (Emphasis added).

{¶27} “Purpose is a decision of the mind to do an act with a conscious objective of producing a certain result. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act is known only to himself unless he expresses it to others or indicates it by his conduct.

{¶28} “The purpose with which a person does an act or brings about a result is determined from the manner in which it is done, the means or weapon used, and all the other facts and circumstances in evidence.”

{¶29} With respect to the charge of aggravated murder in count two, the trial court instructed the jury:

{¶30} “The defendant, Terrand Ramsey, is charged in Count 2 of the indictment with the aggravated murder of Glaheb Yahya, in violation of Revised Code 2903.01, together with two firearm specifications and one felony murder specification.

{¶31} “Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the 19<sup>th</sup> day of January 2002, and in Cuyahoga County, Ohio, the defendant purposely caused the death of another, to wit Glaheb Yahya, while committing, attempting to commit, or fleeing immediately after committing or attempting to commit, the offense of aggravated

robbery. *Purpose and causation have been previously defined for you and the same definitions apply herein.*” (Emphasis added.)

{¶32} Regarding aiding and abetting, the trial court instructed the jury as follows:

{¶33} “Ordinarily where a crime is committed by more than one person, each person is regarded as if he were the principal offender and is as guilty as if he personally performed the crime. A person who acts in concert with the principal with the intent to aid the principal in the performance of an act or commission of a crime is regarded as the aider and abettor. Whoever aids and abets or assists in procuring with another to commit an offense may be prosecuted as if he were the principal offender.

{¶34} “The Court instructs you as a matter of law that if you find beyond a reasonable doubt that the crime was committed, it is not necessary that you find the defendant actually, personally, and with his own hands committed the offense. If you find that the defendant formed a joint design and purpose with another person to commit such a crime, either procured or aided or abetted or assisted such person in the commission of the crime in pursuance of such a previously formed common design and purpose, then the defendant would be guilty of the crime so committed and may be convicted under this indictment of the crime as charged herein.

{¶35} “The mere physical presence of a person does not in and of itself constitute aiding and abetting or amount to complicity if that person did not—did no act in furtherance of the commission of the crime. Aid means to help, assist or strengthen. Abet means to encourage, counsel, incite, or assist. It is for you, as jurors, in light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth.”

{¶36} A jury instruction must be viewed in the context of the overall charge rather than in isolation. *State v. Dixon*, 101 Ohio St.3d 328, 2004-Ohio-1585, at ¶41, citing *State v. Price* (1979),

60 Ohio St.2d 136, paragraph four of the syllabus. Our review of the jury instructions in their entirety indicates that the jury was properly instructed regarding Ramsey's specific intent. In arguing that the jury instructions were incomplete, Ramsey refers only to the instruction regarding aiding and abetting. The record reflects, however, that the trial court also instructed the jury regarding the elements of aggravated murder, and specifically instructed the jury that to find Ramsey guilty, "it must be established \*\*\* that at the time in question there was present in the mind of defendant a specific intention to cause the death of another." The court also instructed the jury as to the definitions of purpose, intent and causation.

{¶37} Ramsey's reliance on *Clark v. Jago* (C.A. 6, 1982), 676 F.2d 1099, is misplaced. In *Clark*, the trial court instructed the jury that "it must be established that at the time in question there was present in the mind of the defendant *and/or* his accomplice a specific intention to cause the death." (Emphasis added). The Sixth Circuit Court of Appeals held that this instruction violated Clark's due process rights because "the charge could easily have been interpreted to mean that Clark, personally, did not have to have purpose to kill, and that Jones' purpose was sufficient to convict Clark, even if not shared by Clark." *Id.* at 1105.

{¶38} Here, however, the trial court specifically instructed the jury that, to find Ramsey guilty of aggravated murder, it must find that he had a specific intent to kill Johnny Yahya. Thus, we find no error in the court's charge.

{¶39} Appellant's second assignment of error is overruled.

#### JURY INSTRUCTION REGARDING ACCOMPLICE TESTIMONY

{¶40} The State called Calvin Hill to testify at Ramsey's trial. Prior to trial, Hill entered into a plea agreement with the State in which he pled guilty to aggravated robbery and the aggravated murder of Johnny Yahya and, as a condition of avoiding the death penalty, agreed to testify at

Ramsey's trial. At his plea hearing, Hill told the three-judge panel which accepted his plea, "My co-defendant in the shooting at 89<sup>th</sup> and Madison was Terrand Ramsey who I was with—who I was with was Terrand Ramsey." Hill also viewed the videotape and identified himself and Ramsey on the tape.

{¶41} At Ramsey's trial, however, Hill recanted his guilty plea and denied that he and Ramsey robbed the Madison 89 Deli on January 19, 2002, or killed Johnny Yahya. Hill testified that he only pled guilty because he was "misled" by his lawyers and because he was trying to avoid the death penalty. Hill denied knowing Ramsey and testified that he did not know why he named him earlier as his accomplice.

{¶42} In its jury instructions, over defense objection, the trial court instructed the jury:

{¶43} "In this instance you have heard testimony from Calvin Hill, another person who pleaded guilty to the same crime charged in this case and is said to be an accomplice. An accomplice is one who purposely joins another in the commission of a crime. Whether Calvin Hill was an accomplice and the weight of his testimony are matters for you to determine. Testimony of a person who you find to be an accomplice should be viewed with grave suspicion and weighed with great caution."

{¶44} R.C. 2923.03(D) mandates that "if an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of \*\*\* an offense, \*\*\*, the court, when it charges the jury, shall state substantially the following:

{¶45} "The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.

{¶46} “It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth.”

{¶47} Ramsey concedes that R.C. 2923.03 mandates the instruction regarding accomplice testimony when an accomplice testifies, but argues that the trial court erred in giving the instruction in this case because Calvin Hill testified in favor of the defense, rather than the State. He contends that by giving the instruction, the trial court improperly commented on Hill’s credibility.

{¶48} We find no error in the trial court’s instruction in this case. Contrary to Ramsey’s argument, the trial court did not instruct the jury that Hill was, in fact, Ramsey’s accomplice. Rather, the trial judge specifically instructed the jury that it must first determine whether Hill was Ramsey’s accomplice. It then further instructed the jury that if it did conclude that Hill was an accomplice, it should view his testimony with “grave suspicion” and weigh it with “great caution.” If the jury concluded that Hill was indeed Ramsey’s accomplice, R.C. 2303.03(D) requires the instruction and, therefore, the instruction was proper.

{¶49} We reject Ramsey’s contention that the statute applies only when an accomplice testifies for the State. The legislative intent of the statute “is to warn juries of the motivations that accompany accomplice testimony in a strong and uniform manner.” *State v. Williams* (1996), 117 Ohio App.3d 488, 495. In short, the policy behind the practice of so instructing the jury is to alert the jury to the possibility of perjured testimony. *U.S. v. Nolte* (C.A. 5, 1971), 440 F.2d 1124, 1126. “When an accomplice testifies for the prosecution he may have an interest in prevaricating in favor of the prosecution to obtain favors or even immunity. On the other hand, when one accomplice testifies for another, there is always the chance that each will try to ‘swear the other out of the

charge.’” *Id.*, citing *Washington v. Texas* (1967), 388 U.S. 14, 21-23. Thus, the charge should be given whether the accomplice testifies for the defense or the prosecution.

{¶50} Contrary to Ramsey’s argument, this case is not like *State v. Lancaster* (Jan. 10, 1990), Summit App. No. 14212. In *Lancaster*, a detective testified that he had purchased marijuana from the defendant via a middleman. The defense called the middleman as a witness and he denied the defendant’s involvement in the marijuana purchase. On appeal, the Ninth District Court of Appeals held that the trial court erred in giving the accomplice instruction to the jury. The court found that the instruction was prejudicial to the defendant because the middleman witness was not presented as a prosecution witness, but was called by and testified on behalf of the defense. Significantly, the court also found that the accomplice charge was improper because it was not warranted by the testimonial evidence presented.

{¶51} Here, however, Hill was called by the State as a prosecution witness to testify regarding his and Ramsey’s involvement in the robbery/murder, as Hill had admitted at his plea hearing. Moreover, although Hill denied that he and Ramsey were involved in the robbery/murder, the other evidence presented at Ramsey’s trial (e.g., the videotape and the testimony of Christina Britton, discussed below) warranted the accomplice instruction.

{¶52} Appellant’s third assignment of error is therefore overruled.

#### HEARSAY EVIDENCE

{¶53} At trial, Christina Britton testified that in January 2002, she lived in the downstairs unit of a two-story home. Calvin Hill, Andre Hill (Calvin’s brother and the father of four of Britton’s children), Cecilia Cooks (Calvin’s girlfriend), and Cecilia’s daughter lived upstairs. Britton knew Ramsey through his association with the Hill brothers.

{¶54} Britton testified further that on the evening of January 19, 2002, she and several of her children were upstairs in Andre’s apartment. Ramsey went into Andre’s bedroom, got two hooded sweatshirts and a long-sleeved black shirt and he and Calvin Hill changed into them. After changing his clothes, Calvin asked Andre to hand him his starter pistol from the drawer and then he and Ramsey drove away in Calvin’s car.

{¶55} Britton testified that Hill and Ramsey returned approximately 20 to 30 minutes later, but no longer had the sweatshirts on. She testified further that when he reached the top of the steps to the apartment, Calvin told Andre, “it went bad, it went all the way bad.” According to Britton, Calvin was “nervous,” “real panicky,” and visibly shaking. When Andre asked Calvin, “what are you talking about?”, Calvin told Andre that “they had went in a store, and they wanted—they had told the guy to give them the money, and the guy told them that the register was jammed. He said that—I can’t remember if he said they broke the pistol hitting the drawer or hitting the guy. And he said that he left the store, went back in and shot him in the neck.” According to Britton, Ramsey was “just sitting on the bed with his head down” while Calvin reported the incident to Andre, and he did not say anything.

{¶56} In his fourth assigned error, Ramsey argues that Britton’s testimony regarding what Hill said was inadmissible hearsay and, therefore, the trial court erred in its admission.

{¶57} Generally, out-of-court statements offered to prove the truth of the matter asserted are inadmissible hearsay. Evid.R. 801(C) and 802. However, Evid.R. 803 provides numerous exceptions to the hearsay rule:

{¶58} “The following are not excluded by the hearsay rule, even though the declarant is available as a witness.

{¶59} “\*\*\*

{¶60} “(2) Excited utterance

{¶61} “A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.”

{¶62} “To be admissible under Evid.R. 803(2) as an excited utterance, a statement must concern ‘some occurrence startling enough to produce a nervous excitement in the declarant,’ which occurrence the declarant had an opportunity to observe, and must be made ‘before there had been time for such nervous excitement to lose a domination over his reflective faculties. \*\*\*” *State v. Huertas* (1990), 51 Ohio St.3d 22, 31, quoting *Potter v. Baker* (1955), 162 Ohio St. 488, paragraph two of the syllabus.

{¶63} Ramsey does not dispute that the Hill’s statements concerned the robbery/murder, that Hill had an opportunity to observe the event, or that the robbery/murder was an “occurrence startling enough to produce a nervous excitement” in Hill. Rather, Ramsey argues that Hill’s statements to his brother Andre were the product of reflective thought, and, therefore, not an excited utterance, because Hill made the statements in response to Andre’s question “What are you talking about?” We disagree.

{¶64} In *State v. Wallace* (1988), 37 Ohio St.3d 87, the Ohio Supreme Court noted that “statements made in response to questions may still be under the stress of the event. The crucial question in all cases is whether the statement was made while the declarant was still under the influence of the event to the extent that his statement could not be the result of fabrication; intervening actions, or the exercise of choice or judgment.” *Id.* at 92, quoting *Johnston v. Ohls* (1969), 76 Wash.2d 398. Accordingly, the Supreme Court of Ohio held that the admission of a declaration as an excited utterance is not precluded by questioning which: “1) is neither coercive nor leading, 2) facilitates the declarant’s expression of what is already the natural focus of the declarant’s



thoughts, and 3) does not destroy the domination of the nervous excitement over the declarant's reflective faculties." Id. at 93. Here, Hill initiated the interaction with Andre by stating, "it went bad, it went all the way bad." Andre then responded by asking a simple, straightforward question: "What are you talking about?" Hill, who Britton testified was nervous, panicky and visibly shaking, was still so obviously "under the influence" of the events that had just taken place such that Andre's question did not "destroy the domination of the nervous excitement over [his] reflective faculties." Id. Rather, it merely facilitated Hill's unreflective expression of what was obviously "the natural focus of [his] thoughts." Id.

{¶65} Under these circumstances, the trial court did not abuse its discretion in concluding that Hill's statements were an excited utterance and, therefore, did not err in admitting Britton's testimony.

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

#### INEFFECTIVE ASSISTANCE OF COUNSEL

{¶67} In his fifth assignment of error, Ramsey contends that his trial counsel was ineffective for failing to object to the jury instructions. Specifically, Ramsey contends that counsel should have objected to the trial court's failure to instruct the jury regarding his specific intent, thereby preserving the error for appeal.

{¶68} In order to establish ineffective assistance of counsel, a defendant must demonstrate that his or her counsel's performance fell below an objective standard of reasonable representation and that he or she was prejudiced by that performance. *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph two of the syllabus, certiorari denied (1990), 497 U.S. 1011.

{¶69} As discussed above, the trial court properly instructed the jury regarding Ramsey's intent. Accordingly, trial counsel was not ineffective for not objecting to proper jury instructions.

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

#### CONSECUTIVE SENTENCES

{¶71} In his final assigned error, Ramsey contends that the trial court erred in sentencing him to consecutive sentences.

{¶72} R.C. 2929.14(E)(4) governs the imposition of consecutive sentences. It provides that a court may impose consecutive sentences only when it concludes that the sentence is: 1) necessary to protect the public from future crime or to punish the offender; 2) not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and 3) one of the following applies: a) the offender committed the offenses while awaiting trial or sentencing, under sanction or under post-release control; b) the harm caused by the multiple offenses was so great or unusual that a single prison term would not adequately reflect the seriousness of his offense; or c) the offender's criminal history demonstrates that consecutive sentences are necessary to protect the public from future crime.

{¶73} In addition to the three findings required by R.C. 2929.14(E)(4), R.C. 2929.19(B)(2) requires that the trial court give its reasons for imposing consecutive sentences. Failure to sufficiently state these reasons on the record constitutes reversible error. *State v. Parker*, Cuyahoga App. No. 81938, 2003-Ohio-3253, ¶44.

{¶74} Here, the trial court specifically found that consecutive sentences were "necessary on count two and count three to protect the public from future crimes and to punish [Ramsey]." In addition, the trial court found that "the harm caused was so great that no single prison term would adequately reflect the seriousness of the offense." As reasons for these findings, the trial judge noted that Johnny Yahya's killing resulted "through a conscious decision to come back and injure someone when the offense had already stopped. \*\*\* [T]he aggravated robbery was over when you and your

co-defendant made the decision to come back in and harm Mr. Yahya.” In addition, the trial court found that “your actions led to the death of a man who in no way deserved it or provoked it.”

{¶75} On this record, we hold that the trial court made the necessary statutory findings and sufficiently gave its reasons for those findings to impose consecutive sentences.

{¶76} Appellant’s sixth assignment of error is overruled.

Judgment affirmed.

SEAN C. GALLAGHER, J., CONCURS.

JAMES J. SWEENEY, P.J., CONCURRING:

{¶77} I concur with the majority opinion but write separately to distinguish my position with regard to the testimony of an accomplice. It is my opinion that pursuant to the plain language of R.C. 2923.03(D), a jury instruction that comments on the credibility of an accomplice and states that such testimony should be “viewed with grave suspicion and weighed with great caution” should only be given when the accomplice testifies for the State against the defendant.

{¶78} While I believe the trial court erred in giving the jury instruction regarding Calvin Hill’s testimony, I believe that such error was harmless given the overwhelming amount of evidence against the defendant.