

[Cite as *State v. Harris*, 2016-Ohio-391.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102855

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JOHNNIE HARRIS**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-585507-A

**BEFORE:** Laster Mays, J., Jones, A.J., and Keough, J.

**RELEASED AND JOURNALIZED:** February 4, 2016

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Johnnie Harris (“Harris”) was found guilty of 26 counts of aggravated robbery, a first-degree felony, in violation of R.C. 2911.01(A)(1); 45 counts of kidnapping, a first-degree felony, in violation of R.C. 2905.01 (A)(2); two counts of felonious assault, a second-degree felony, in violation of R.C. 2903.11(A)(2); one count of misuse of a credit card, a first-degree misdemeanor, in violation of R.C. 2913.21(B)(2); and 18 counts of having a weapon while under disability, a third-degree felony, in violation of R.C. 2923.13(A)(2). The trial court imposed a sentence of 57 years in prison. Harris appealed.

{¶2} After a review of the record, we affirm the trial court’s convictions and sentence.

Harris assigns four errors for our review.

I. The trial court erred when it deprived appellant of his right to present a defense by refusing to permit defense witnesses to testify.

II. The trial court erred when it failed to require all of the jurors to place their signatures on the vast majority of the verdict forms submitted to them.

III. The trial court erred by permitting the state to introduce unduly prejudicial and improper evidence including appellant’s parole status, unsubstantiated accusations against appellant that he committed other unindicted robberies and references to appellant’s juvenile record during cross-examination.

IV. The trial court erred when it dismissed an African-American juror immediately prior to juror deliberations on its own motion without good cause and over defense counsel’s objection.

## **I. Facts and Procedural Posture**

{¶3} Harris and three other people, including his sister, Sharina Harris (“Sharina”) were involved in a string of commercial aggravated robberies throughout Cleveland, Lakewood, Euclid, and Eastlake. Detectives across the four cities collaborated and shared information

about the robberies in their city and determined that the suspects in each robbery were the same. After speaking to witnesses, and looking at the available evidence, detectives determined that Harris, Sharina, and two others were responsible for the robberies. Witnesses were able to identify Harris by his distinctive deep voice, his unusual eyes, and red Jordan sneakers that he wore during each of the robberies.

{¶4} Detectives were able to apprehend Harris after tracking a cell phone that he stole from a victim and used. They tracked the cell phone to Harris's mother's house and then they located Harris and Sharina driving together. Both were arrested.

{¶5} At the trial, Sharina testified and admitted to her role in four of the armed robberies with Harris. She also testified that her brother, Harris, confessed to her his involvement in other robberies. Sharina explained that she rented the getaway cars used in the robberies. She also identified the other two accomplices as Qwayon Marshall ("Marshall") and Devon Johnson ("Johnson").

{¶6} In addition to over 65 state's witnesses, the state called Detective Kroczak ("Kroczak") and Ashley Zack ("Zack"). During his testimony, Kroczak testified that Johnnie Harris was on parole at the time of the investigation. Harris's defense counsel objected and the court sustained the objection. During Zack's testimony, the state asked her if Harris had told her about any of the robberies with which he was involved. She replied, "Yes. Like, two Chinese restaurants on St. Clair, gas stations. He robbed CVS on Madison." (Tr. 2146.) Harris was not indicted for robbing two Chinese restaurants.

{¶7} As a part of his defense, Harris wanted to call Sonia Ramos ("Ramos"), Corneisha Shepard ("Shepard"), and codefendant Marshall to testify on his behalf. Ramos had previously testified as the state's witness, and defense counsel cross-examined her. However, Harris

wanted to call her as his witness because Ramos claimed she had information to share that neither the state nor defense counsel asked her about. The judge determined that both sides had a full opportunity to examine Ramos, and would not allow her to return to the stand.

{¶8} Harris wanted to call Shepard, Sharina's daughter, as his witness to testify that she overheard her mother planning the robberies while Harris was not present. The judge ruled that while the defense was allowed to call Shepard as a witness, hearsay would not be allowed into evidence. Harris's counsel chose not to call her as a witness. Then Harris's counsel stated that Marshall wanted to recant or change his testimony. The court asked Marshall if he wanted to change his testimony, and he replied that he did not want to because his lawyer was not present. He was provided with a new lawyer, and decided not to recant his previous testimony.

{¶9} Harris testified in his own defense. During his testimony, Harris was asked by his counsel if he ever had any guns. He testified that he never had guns. During the cross-examination, the state impeached this testimony. (Tr. 2725-2726.)

STATE: And you said — when defense counsel was asking you about guns, you said you never had no guns. But that's not true, either, is it? You were arrested with a —

HARRIS: As far as being on this time, I never touched no guns.

STATE: You were arrested with a gun in 2011, though, right?

HARRIS: Yes, I was.

STATE: So you just meant you didn't have any guns in 2013. But that's not what you said. You said you never had no guns, didn't you?

HARRIS: Yeah, but being we was in prison, I can't have no guns in prison.

STATE: Well, I assume you didn't have any guns while you were in prison, Johnnie. But in November, when you were arrested in 2011 for robbery, you had a gun on you, didn't you?

HARRIS: When I was arrested in 2011 for robbery?

STATE: Yes.

HARRIS: No, I didn't have a gun on me.

STATE: And where was the gun at when you were arrested?

HARRIS: I was arrested for a gun, but it wasn't a robbery. It was a carrying concealed weapon. That was a different -- that was a different time. I was a juvenile.

STATE: So that was another time that you had a gun?

HARRIS: Only had a gun one time. That's the time I talking about. But it wasn't a robbery, though.

{¶10} After the trial was completed and before jury deliberations, one of the jurors, who was African-American, notified the court that she had a conflict on the day of deliberations. She was scheduled to appear in juvenile court. The court replaced her with an alternate juror reasoning that the uncertainty of the juvenile hearing may impede the deliberations and cause unnecessary delay or rush the jury into a decision.

{¶11} The trial court instructed the jury that after reaching a verdict, they had to place their signatures on the verdict forms. But, because of the sheer volume of verdict forms, the court permitted the jurors to sign the remaining verdict forms using their initials. The court instructed the jurors to sign their full names on the first count with their initials next to their signatures so the identification would be preserved. In addition, the court required the jurors to sign or initial on the lines corresponding to their juror number.

{¶12} At the conclusion of the trial, Harris was found guilty on 93 counts of the 108 charged. He was sentenced to 57 years in prison, advised of his appellate rights, and ordered to pay costs. Harris now files this timely appeal.

## **II. Defense Witnesses**

{¶13} In his first assignment of error, Harris argues that the trial court erred when it deprived appellant of his right to present a defense by refusing to permit defense witnesses to testify. Harris wanted to call three witnesses on his behalf: Ramos, Marshall, and Shepard. After an inquiry into the additional testimony, the trial judge made three different rulings.

{¶14} A trial court has broad discretion concerning the admission of evidence. *State v. Pawlak*, 8th Dist. Cuyahoga No. 99555, 2014-Ohio-2175, ¶ 110.

The decision whether to admit or exclude evidence is subject to review under an abuse of discretion standard, and absent a clear showing that a trial court abused its discretion in a manner that materially prejudices a party, an appellate court will not disturb an evidentiary ruling. An abuse of discretion connotes more than an error in law or judgment, but instead demonstrates perversity of will, passion, prejudice, partiality, or moral delinquency. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court.

*Pappas v. Ippolito*, 177 Ohio App.3d 625, 2008-Ohio-3976, 895 N.E.2d 610, ¶ 19 (8th Dist.).

{¶15} During voir dire of Ramos, it was discovered that Ramos had remembered information that she states she was never asked about on direct or cross-examination. Additionally, she had not remembered things because she was going through a lot. Counsel questioned Ramos as follows:

STATE: And if he would have asked you those questions, you would have remembered on Tuesday, correct?

RAMOS: It all depends. Like I said, I have a lot of things going on, particularly in my life.

(Tr. 2663.) At the conclusion of the voir dire and counsel's arguments, the trial court ruled that the additional evidence was not relevant or probative and was unnecessary.

{¶16} In *State v. Spirko*, 59 Ohio St.3d 1, 570 N.E.2d 229 (1991), the court held that prohibiting the recall of a witness is not a denial of a defendant's right to compulsory process. The recall of a witness is within the sound discretion of the trial court. *State v. Jenkins*, 8th

Dist. Cuyahoga No. 68961, 1997 Ohio App. LEXIS 5805 (Dec. 24, 1997). In the case at bar, the state and defense counsel had sufficient opportunity to question Ramos. Ramos also admitted that it was no guarantee that she would have remembered the testimony anyway because she had a lot going on. After a complete inquiry into what the testimony might have been, the court made a ruling. We find that the court did not abuse its discretion when it did not allow Ramos to testify again.

{¶17} Defense counsel also informed the court that Marshall wished to recant his testimony. After discussion with Marshall's first attorney, the court learned that Marshall wanted to withdraw his plea and testify on behalf of Harris. His counsel advised him not to recant and requested the court to appoint Marshall another attorney since he was no longer effective. Once provided with another attorney, Marshall decided not to testify. The court proceedings were as follows:

COUNSEL: At this time, your Honor, if I may, I believe Mr. Marshall is going to withdraw his motion to withdraw his plea at this time.

THE COURT: All right. Is that your intent then Mr. Marshall?

MARSHALL: Yes.

THE COURT: Okay. After discussion with counsel then you've changed your mind from previously?

MARSHALL: Yes.

(Tr. 2798-2799.) The court did not keep Marshall from testifying. The court did not abuse its discretion when Marshall decided not to testify.

{¶18} Defense counsel informed the court that Shepard wanted to testify on Harris's benefit. After voir dire of Shepard's testimony, the court informed defense counsel that hearsay testimony would not be allowed to be entered into evidence, but Shepard was permitted to testify.



“Testimony or evidence must otherwise be admissible under the rules of evidence.” *Taylor v. Illinois*, 484 U.S. 400, 411, 108 S.Ct. 646, 98 L.Ed.2d 798 (1987). Defense counsel chose not to have Shepard testify. Therefore, the court did not abuse its discretion. Harris’s first assignment of error is overruled.

### **III. Jurors’ Signatures**

{¶19} Harris contends that the trial court erred when it failed to require all of the jurors to place their signatures on the vast majority of the verdict forms submitted to them. A review of the record demonstrates that Harris did not object at trial to the court’s instruction regarding the initialing of the additional verdict forms. Therefore, any alleged error is waived absent a showing of plain error. *State v. Sanders*, 8th Dist. Cuyahoga No. 71382, 1997 Ohio App. LEXIS 4570 (Oct. 9, 1997).

To constitute plain error, the error must be obvious on the record, palpable, and fundamental, so that it should have been apparent to the trial court without objection. Moreover, plain error does not exist unless the appellant establishes that the outcome of the trial clearly would have been different but for the trial court’s allegedly improper actions. Notice of plain error is to be taken with utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice.

*State v. Elliott*, 8th Dist. Cuyahoga No. 92324, 2010-Ohio-241, ¶ 24.

{¶20} The court permitted the jurors to use their initials to sign additional verdict forms. Harris argues that this violated Crim.R. 31, which states, “the verdict shall be unanimous. It shall be in writing, signed by all jurors concurring therein, and returned by the jury to the judge in open court.” The rules do not state that the signature cannot be in the form of initials. The court instructed the jurors to sign the first verdict form with their full names and their initials next to their signature. Then specifically instructed the jurors to sign under the slot next to their corresponding juror number. (Tr. 2865.) “In other words, Juror No. 1 should sign next to the

line that says one, and two should sign next to two, and be consistent with that throughout.” (Tr. 2866.) The verdict forms were in excess of 100 pages. In the interest of efficiency and time management, the court ruled that the jurors could use their initials on the remaining verdict forms.

{¶21} Harris has not established that, but for these actions, the outcome of the trial would have been different. The court’s instruction and the jury’s action did not create a manifest miscarriage of justice. Harris’s second assignment of error is overruled.

#### **IV. Unduly Prejudicial and Improper Evidence**

{¶22} Harris argues that the trial court erred in permitting the state to introduce unduly prejudicial and improper evidence including appellant’s parole status, unsubstantiated accusations against appellant that he committed other unindicted robberies and references to appellant’s juvenile record during cross-examination. “A trial court has broad discretion in rendering evidentiary rulings and the appellate court will not reverse such a ruling absent an abuse of discretion resulting in prejudicial error.” *State v. Thompson*, 8th Dist. Cuyahoga No. 99846, 2014-Ohio-1056, ¶ 23. A court abuses its discretion when its judgment is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶23} Harris contends that Krocak’s testimony about him being on parole was highly prejudicial because it allowed the jury to hear that he had a criminal record. However, Harris testified about his criminal record and additional criminal activities.

STATE: And how long — when did you — you get out of prison in July of 2013. When did you start selling heroin?

HARRIS: I met — I meant I first started selling heroin when I met Ashley. That was around September, October.

STATE:        So you learned a lesson that you were never going to touch another gun again after you were in prison but you went right into selling heroin.

HARRIS:       Yeah.    She talked me into it.

From his testimony it can be noted that Harris not only admitted to being in prison, but also selling heroin after his prison release.    Krocak's testimony was not unduly prejudicial to Harris because he testified in even greater detail about his criminal past and actions.    The court did not abuse its discretion in allowing Krocak's testimony.

{¶24} Harris also contends that the court erred in allowing Zack's testimony to be entered into evidence because she testified to unindicted robberies by Harris.    Zack testified that Harris told her he robbed two Chinese restaurants.    Harris was never indicted for robbing these restaurants.    Defense counsel did not object to this testimony at trial, we must review it for plain error.    "An issue is waived, absent a showing of plain error, if it is not raised at the trial level." *State v. Phillips*, 74 Ohio St.3d 72, 93, 656 N.E.2d 643 (1995).    However, "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."    Crim.R. 52(B). "Plain error does not exist unless the appellant establishes that the outcome of the trial clearly would have been different but for the trial court's allegedly improper actions."    *Pappas* at ¶ 19.

{¶25} Harris has not established that Zack's testimony changed the outcome of the trial.    The state presented over 65 witnesses and hundreds of documents to prove that Harris committed these crimes.    He cannot clearly show that the outcome of his trial would have been different if Zack's testimony was not presented into evidence.    In addition, Harris has not shown that Zack's testimony was improper.    In *State v. Doss*, 8th Dist. Cuyahoga Nos. 40773, 40774, 40776, 1980 Ohio App. LEXIS 12161, \* 14 (May 8, 1980), the court stated,

[T]he fundamental fairness of a trial \* \* \* does not require that all evidence which, in itself, may tend to prove an unindicted crime done by the defendant be stricken from the evidence. The appellant was able to adequately cross-examine each witness and to present witnesses and evidence in defense of those acts raised. A continuance could have been requested if the testimony was of a surprising nature.

Harris testified in his own defense. He could have refuted the claims made by Zack, but he did not.

{¶26} Harris also argues that the trial court erred in allowing testimony about his juvenile criminal record. “Evidence of juvenile adjudications is not admissible except as provided by statute enacted by the General Assembly.” Evid.R. 609(D). However, “when a defendant in a criminal case is permitted to introduce evidence of his life history, he waives the protection of Section 1639-30, General Code, and may be cross-examined with reference to the disposition of any charge preferred against him as a juvenile.” *State v. Marinski*, 139 Ohio St. 559, 560, 41 N.E.2d 387 (1942). During his testimony, Harris stated that he never possessed a gun. The state impeached that testimony by asking him if it was a lie. Harris is the one who brought up that this was part of his juvenile record. Defense counsel ask Harris about ever having a gun, even though counsel knew that information was part of Harris’s juvenile record. Once the defense questioned Harris regarding a gun, he could be cross-examined as to the veracity of his statements. Therefore, Harris’s third assignment of error is overruled.

## **V. Juror Dismissal**

{¶27} In his fourth assignment of error, Harris contends that the trial court erred when it dismissed an African-American juror immediately prior to jury deliberations on its own motion without good cause and over defense counsel’s objection.

A trial court in the exercise of its discretion may disqualify a juror for cause and this determination will not be reversed on appeal absent an abuse of discretion.

The term abuse of discretion connotes more than an error of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.

*State v. Burns*, 113 Ohio App.3d 598, 601, 681 N.E.2d 965 (8th Dist.1996). Juror No. 4 reminded the court that she had a conflict on the day that deliberations were supposed to begin. The court as well as Juror No. 4 called juvenile court to see if they were willing to continue its hearing. The court took several breaks during closing arguments to check for a response from juvenile court.

COURT: We've asked her \* \* \* every break, we've asked. So we've taken two breaks during the course of closing arguments. So we have conducted about as rigorous an examination as can be had under these circumstances. I mean we're calling the court and we're not getting calls back. So she's not gotten any indication whether or not the court would be amenable to a continuance. And again, this has been pending for quite some time.

(Tr. 2970.) Rather than delay an already lengthy trial, the court made the decision to excuse Juror No. 4 and seated Alternate No. 1. R.C. 2945.45 states:

If, before the conclusion of the trial, a juror becomes sick, or for other reason is unable to perform his duty, the court may order him to be discharged. In that case, if alternate jurors have been selected, one of them shall be designated to take the place of the juror so discharged. If, after all alternate jurors have been made regular jurors, a juror becomes too incapacitated to perform his duty, and has been discharged by the court, a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or thereafter impaneled.

{¶28} The court was well within its discretion to replace the juror in accordance with R.C. 2945.45. There is no evidence that the replacement of Juror No. 4 was because she was African-American, but rather because she had a conflict where she had to appear in juvenile court. Therefore, Harris's fourth assignment of error is overruled.

{¶29} For reasons consistent with this opinion, we affirm the convictions of Harris.

It is ordered that the appellee recover from appellant 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 to carry this judgment into execution.

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

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ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR