IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
PLAINTIFF-APPELLEE,	:	CASE NO. 2020-0599
	:	
VS.	:	ON APPEAL FROM THE
	:	LAKE COUNTY COURT OF APPEALS,
MANSON M. BRYANT,	:	ELEVENTH APPELLATE DISTRICT,
	:	CASE NO. 2019-L-024
DEFENDANT-APPELLANT.	:	
	:	

MERIT BRIEF OF APPELLANT MANSON BRYANT

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INTRODUCTION

When the trial court increased Manson Bryant's sentence by six years, it did so to punish him for disrespecting the court. But Ohio's statutory sentencing scheme does not permit trial courts to consider a defendant's respect towards the court—or lack thereof—when fashioning a sentence. R.C. 2929.12. Rather, if a trial court wishes to incarcerate someone for disruptive, in-court misbehavior, it may do so in 30-day increments under Ohio's contempt-of-court statute. R.C. 2705.01; R.C. 2705.05.

Contrary to the trial court's assertion, Mr. Bryant's response to learning that he was going to spend the next 22 years of his life in prison did not reflect a lack of remorse; it demonstrated shock and anger towards the court for its judgment. Thus, because his behavior had no relationship to any factor which the trial court could consider in sentencing, the six-year increase was clearly and convincingly unsupported by the record. The Eleventh District erred by holding otherwise, and this Court should reverse.

STATEMENT OF THE CASE AND FACTS

Manson Bryant and two accomplices are charged in connection with a break-in, and Mr. Bryant proceeds to trial after the others plead.

In October 2018, Mr. Bryant was indicted on seven counts for allegedly breaking into a trailer with another man, Jeffrey Bynes. *State v. Bryant*, 11th Dist. Lake No. 2019-

L-024, 2020-Ohio-438, ¶ 2–3. They allegedly did so after Mr. Bynes took another accomplice, Lindsay Brooke Medina[1], to case it. (T.p. at 345–46, 393.)[2]

Mr. Bryant was charged with: 1) first-degree felony aggravated burglary under R.C. 2911.11(A)(1); 2) first-degree felony aggravated burglary under R.C. 2911.11(A)(2); 3) first-degree felony aggravated robbery under R.C. 2911.01(A)(1); 4) first-degree felony kidnapping under R.C. 2905.01(A)(2); 5) third-degree felony abduction under R.C. 2905.02(A)(2); 6) third-degree felony having weapons while under disability under R.C. 2923.13(A)(2); and 7) fourth-degree felony carrying concealed weapons under R.C. 2923.12(A)(2). *Bryant* at ¶ 3. In February 2020, Mr. Bryant proceeded to a jury trial on the first five counts and a bench trial on the last two. *Id.* at ¶ 4.

Mr. Bynes was also charged with seven counts in connection with the alleged burglary, largely mirroring Mr. Bryant's charges. *See State v. Bynes,* Case No. 18 CR 000729, Party Charge Information, available at https://bit.ly/3jceucK (accessed Oct. 19, 2020). In November 2018, Mr. Bynes pleaded guilty to two counts: first-degree felony aggravated burglary with specifications under R.C. 2911.11(A)(2) and second-degree felony robbery under R.C. 2911.02(A)(1) as a lesser-included offense. *State v. Bynes,* Case No. 18 CR 000729, Nov. 9, 2018 Judgment Entry, Docket Text available at https://bit.ly/3jceucK (accessed Oct. 19, 2020). He received an aggregate 12-year prison

[1] This Brief uses the spelling "Lindsay," as it appears in the trial transcript, although it appears as "Lindsey" on the Lake County Docket.

[2] "T.p." refers to the trial transcript only. Citations to other parts of the record, including other transcripts, will be delineated.

sentence. *State v. Bynes,* Case No. 18 CR 000729, Nov. 14, 2018 Journal Entry of Sentence, Docket Text available at https://bit.ly/3jceucK (accessed Oct. 19, 2020).

Ms. Medina was charged with one count of second-degree felony complicity to burglary under R.C. 2911.12(A)(2), to which she ultimately pleaded guilty. *State v. Medina*, Case No. 18 CR 000730, Oct. 17, 2018 Journal Entry, Docket Text available at https://bit.ly/31hL3zO (accessed Oct. 19, 2020). Four months later—after Mr. Bryant was convicted, but before his sentencing—Ms. Medina was sentenced to five years of community control, 45 days in jail, and was ordered to pay restitution. *State v. Medina*, Case No. 18 CR 000730, Feb. 19, 2019 Journal Entry of Sentence, Docket Text available at https://bit.ly/31hL3zO (accessed Oct. 19, 2020).

Mr. Bynes took Ms. Medina to case her friend's trailer before Mr. Bynes and Mr. Bryant break in.

On July 6, 2018, around 4:30 A.M., Mr. Bynes drove Ms. Medina to the trailer of her friend, Arturo Gonzalez-Hernandez, so she could figure out how to get in and where to find his money. (T.p. at 208–10, 345–46, 393.) When they arrived, Ms. Medina entered the trailer through an unlocked window. (T.p. at 345–46.) After she got in, Ms. Medina went into Mr. Gonzalez-Hernandez's bedroom, turned on his light, and asked him for $30, which he gave to her from his wallet. (T.p. at 209–11.) She remained for only a couple minutes, and Mr. Gonzalez-Hernandez went back to bed afterwards. (T.p. at 213.)

After Mr. Bynes and Ms. Medina returned to the condo where Mr. Bynes and Mr. Bryant lived, she saw Mr. Bynes take a loaded gun, which he usually kept under his

mattress, and place it in the waistband of his pants. (T.p. at 361.) Ms. Medina then saw Mr. Bynes and Mr. Bryant leave the condo and get in a car, with Mr. Bynes driving. (T.p. at 362.)

Around 5:00 A.M., two men entered Mr. Gonzalez-Hernandez's bedroom and woke him up. (T.p. at 214.) Although it was dark, he could tell that one of them was wielding a gun. (T.p. at 215.) The man with the gun "activated the trigger," which made a clicking sound, and pointed it at Mr. Gonzalez-Hernandez's forehead. (T.p. at 215–16.) The man with the gun walked towards Mr. Gonzalez-Hernandez, caused him to lay down, covered him up, and struck him three times while keeping the gun pressed against his ribcage. (T.p. at 216–17.) The two men took some wallets and several other items, including a laptop, before leaving. (T.p. at 219–21, 363-64.) Later, at Mr. Bynes's urging, Ms. Medina pawned the computer. (T.p. at 368–69.)

Other witnesses verify that Jeffrey Bynes owned a gun.

A former roommate of Mr. Bynes and Mr. Bryant, Kimberly Walter, testified that Mr. Bynes owned a gun, which she identified as State's Exhibit 8A. (T.p. at 492.) She recalled seeing Mr. Bynes's gun tucked in the back of his waistband when he, Mr. Bryant, and Ms. Medina returned to the condo in the early morning hours of July 6, 2018. (T.p. at 496–97.) Sometime later, the police found Mr. Bynes's gun in the condo. (T.p. at 508–10.) Another roommate, Brian McCauley, found bullets in the room where Mr. Bynes stayed. (T.p. at 538, 543.)

No forensic evidence connects Manson Bryant with actual possession of a gun.

Detective Dominic Hren testified about his investigation of the break-in. (T.p. at 561.) At the condo, he found a forty-caliber handgun in the bathroom and a "forty caliber live round of ammunition" in Mr. Bynes's room. (T.p. at 590, 598.) Detective Hren did not have anyone take fingerprints or DNA from the trailer. (T.p. at 654.)

Two individuals testified concerning forensic testimony: Rebecca Silverstein and Leanne Suchanek. (T.p. at 657, 705–06.) Their testimony, which concerned fingerprint and DNA evidence gathered from the firearm and a box of ammunition, did not establish that Mr. Bryant handled either. (*See* T.p. at 680, 696–97, 725.)

The trial court initially sentences Mr. Bryant to 22 years in prison, but increases the sentence by six years after Mr. Bryant's outburst.

Mr. Bryant was found guilty on all seven counts. (Mar. 1, 2019 Sentencing Tr. at 3–4.) After the court's merger analysis, the following four convictions remained: first-degree felony aggravated burglary (count one); first-degree felony aggravated robbery (count three); third-degree felony having weapons while under disability (count six); and fourth-degree felony carrying concealed weapons (count seven). (*Id.* at 4–5.) Counts one and three carried one- and three-year firearm specifications. (*Id.* at 3.)

At sentencing, Mr. Bryant's attorney advocated for a 10-year prison sentence, considering Mr. Bryant's conduct relative to Mr. Bynes's. (*Id.* at 7.) Mr. Bryant's role was that of "aider and abettor" to Mr. Bynes, the "princip[al] actor," who was sentenced to 12 years in prison. (*Id.* at 8–9.) In addition, no evidence suggested that Mr. Bryant acquired the firearm or that he physically possessed it at any time. (*Id.* at 7–8.) In light of

those facts, and given the court's interest in rehabilitation, counsel suggested that a 10-year prison sentence would be appropriate. (*Id.* at 9.)

Mr. Bryant spoke next. (*Id.*) He said he was sorry for his "lifetime of bad decisions," which "has caused pain to a lot of people in [his] family." (*Id.*) He acknowledged that most of his bad decisions were triggered by his drug addiction, which caused him to "do whatever [he could] to continue to get high." (*Id.*) But, at the same time, he understood that he "can't continue to blame others for [his] actions and behaviors" and that "[he] alone [has] the power to end the cycle of incarceration." (*Id.* at 10.) In sum, he asked the court to "give [him] an opportunity to still make something out of [his] life" and expressed that he doesn't "want to die in prison." (*Id.*)

After those statements, and the statement of the prosecutor, the court proceeded to sentencing. (*Id.* at 16.) With respect to recidivism, it found that "the offenses were committed under circumstances very likely to recur" and that Mr. Bryant posed "the greatest likelihood of committing future crimes." (*Id.* at 18.) But it also found that Mr. Bryant showed "a certain amount of remorse," which made recidivism "less likely." (*Id.*) In the end, the court announced that Mr. Bryant would serve an aggregate 22-year prison sentence, broken down as follows:

- Count one: eight years plus three years on the firearm specification, consecutive to count three;
- Count three: eight years plus three years on the firearm specification, consecutive to count one;
- Count six: thirty-six months, concurrent to all other charges; and
- Count seven: eighteen months, concurrent to all other charges.

(*Id.* at 20–21.) Then the following exchange occurred:

Manson Bryant:	Fuck your courtroom, you racist ass bitch. Fuck your courtroom, man. You racist as fuck. You racist as fuck. Twenty-two fucking years. Racist ass bitch. (CONTINUED OUTBURST BY DEFENDANT, SWEARING, YELLING, MUCH UNINTELLIGIBLE)
Judge Lucci:	Remember when - -
Manson Bryant:	You ain't shit.
Judge Lucci:	Remember when I said that you had some remorse?
Manson Bryant:	You ain't shit . . . You never gave me probation.
Judge Lucci:	Wait a minute.
Manson Bryant:	You never gave me a chance.
Judge Lucci:	When I said that you had a certain amount of remorse, I was mistaken. (DEFENDANT CONTINUES YELLING) The Court determines - -
Manson Bryant:	Fuck you.
Judge Lucci:	The Court determines that maximum imprisonment is needed, so it's eleven years on Count 1 and eleven years on Count 3.
Manson Bryant:	Fuck that courtroom. You racist bitch. You ain't shit. (MALE VOICE SAYING 'MANSON' REPEATEDLY) Let me out the courtroom, man. (MORE SHOUTING AND SWEARING)
Judge Lucci:	So it's twenty-eight years with credit for two hundred and thirty-one days. Hold on. (DEFENDANT STILL SHOUTING) Does counsel waive your client's presence for the remainder of the advisements I have to give?
Dan Williams:	Yes, Your Honor.
Judge Lucci:	Alright. You can take him. The Court determines that the Defendant has shown no remorse whatsoever. I

> was giving him remorse, a certain amount of remorse in mitigation of the sentence. The Defendant has shown me that he has no remorse whatsoever, and therefore the Court determines that maximum imprisonment is needed. He poses the greatest likelihood of recidivism. * * *

(*Id.* at 21–22.)

The Eleventh District Court of Appeals upholds the six-year increase, Mr. Bryant appeals, and this Court accepts review.

On appeal, Mr. Bryant argued, among other assignments of error, that the six-year increase was contrary to law. *State v. Bryant*, 11th Dist. Lake No. 2019-L-024, 2020-Ohio-438, ¶ 7–8. Relying on its decision in *State v. Thompson*, 2017-Ohio-1001, 86 N.E.3d 608 (11th Dist.), the Eleventh District found that Mr. Bryant's sentence was not final and could be revisited based on his behavior. *Bryant* at ¶ 20. Based on that case, and because it thought that the trial court "could" have construed Mr. Bryant's behavior "as a sign that his previous statements of remorse and contrition were not genuine," the *Bryant* court upheld the revision. *Id.* at ¶ 24. At the same time, it noted that Mr. Bryant's "sudden verbal eruption [did] not necessarily reflect a lack of remorse." *Id.* It reasoned that Mr. Bryant "could possess deep regret for the crimes he committed and the harm he caused and, at the same time, have a highly negative emotional reaction to the court's sentence." *Id.*

Mr. Bryant appealed to this Court pro se, and this Court accepted review on the first proposition of law: whether the trial court erred by increasing his sentence by six

years in response to his outburst.[3] (May 11, 2020 Mem. in Support of Jurisdiction; *08/05/2020 Case Announcements*, 2020-Ohio-3884.)

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law:

A defendant's disrespect towards the trial court, when done in response to a judicial ruling, is punishable as contempt of court, but does not provide a lawful basis for increasing the defendant's sentence.

I. Introduction

Ohio law sets forth the purposes of felony sentencing and the factors which trial courts must consider to achieve those purposes. R.C. 2929.11; R.C. 2929.12. Those factors consider the seriousness of the offense, the offender's likelihood of recidivism, and the offender's military-service record. R.C. 2929.12(B)–(F). In-court misbehavior does not provide a basis for increasing a defendant's sentence unless such behavior is connected to one of those factors. *See id.* Standing on its own, in-court misbehavior is summarily punishable under Ohio's contempt-of-court statute when it's done "in the presence of or so near the court or judge as to obstruct the administration of justice." R.C. 2705.01.

Although a defendant's level of remorse bears on recidivism, misbehavior does not necessarily reflect a lack of remorse. *See* R.C. 2929.19(D)(5), (E)(5); *State v. Bryant*, 11th Dist. Lake No. 2019-L-024, 2020-Ohio-438, ¶ 24. Here, the trial court conflated the

[3] Because Mr. Bryant's brief did not formulate a specific proposition of law, this Brief does so, consistent with the arguments raised on appeal.

two concepts when it increased Mr. Bryant's sentence by six years. (Mar. 1, 2019 Sentencing Tr. at 21–22.) That was improper because Mr. Bryant's outburst was directed at the court in response to its sentencing announcement. (*Id.*) One can feel genuine remorse for their actions and still think that their punishment was disproportionate or that the process was unfair. *See Bryant* at ¶ 24. Because the circumstances here clearly and convincingly show that Mr. Bryant's behavior demonstrated only anger towards the trial court for its judgment—and not a lack of remorse—the trial court acted unlawfully when it revised Mr. Bryant's sentence.

II. Standard of Review

An appellate court may modify a sentence if it determines, by clear and convincing evidence, that the record does not support it. *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 23. "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). This burden is "intermediate" because it requires more proof than a preponderance, but not the level of certainty needed under beyond a reasonable doubt. *Id.* "It does not mean clear and *unequivocal*." (Emphasis sic.) *Id.*

This standard provides "substantial, but not unfettered, deference to the trial court's judgment." *State v. Johnson*, 8th Dist. Cuyahoga No. 107528, 2019-Ohio-4668, ¶ 34. Appellate review of felony sentencing must be "[m]eaningful." *Id.*

III. The trial court unlawfully increased Mr. Bryant's sentence when his misbehavior was unconnected to his level of remorse or any other sentencing factor.

A. A defendant's in-court misbehavior is punishable only as contempt of court unless such behavior is connected to a sentencing factor.

This Court has defined contempt of court as "disobedience of an order of a court." *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 15, 520 N.E.2d 1362 (1988), citing *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph one of the syllabus. Behavior constituting contempt of court is "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Id.* The purpose of a contempt-of-court sanction is "to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Windham Bank* at paragraph two of the syllabus; *see also State v. Kilbane*, 61 Ohio St.2d 201, 400 N.E.2d 386, (1980), paragraph two of the syllabus ("The primary purpose of a criminal contempt sanction must be to vindicate the authority of a court * * *."). Considering the plain language of the contempt-of-court statute and its purpose, Mr. Bryant's conduct was punishable as contempt of court. *Bryant* at ¶ 24; R.C. 2705.01.

Where Ohio's contempt-of-court statute expressly empowers trial courts to punish individuals for disruptive behavior, Ohio's sentencing statutes do not. Rather, Ohio's sentencing statutes list the purposes of felony sentencing and the factors which trial courts must consider to accomplish those purposes. R.C. 2929.11; R.C. 2929.12. Thus, it follows that a trial court may consider a defendant's behavior—when such

behavior is unconnected to the charge at issue—only if it relates to one or more of those factors. For example, if a defendant convicted of a drug offense tested positive between their conviction and sentencing, that would show a higher likelihood of recidivism. R.C. 2929.12(D)(4). Or if a defendant's in-court statement were to demonstrate animus towards their victim, that would show a lack of remorse. R.C. 2929.12(D)(5). But, here, no such factors were implicated by Mr. Bryant's behavior.

B. Mr. Bryant's behavior demonstrated anger at the trial court for its judgment, not a lack of remorse.

Mr. Bryant's outburst was directed solely at the trial court in response to its announcement that he would serve 22 years in prison. (Mar. 1, 2019 Sentencing Tr. at 21–22.) What Mr. Bryant said was insulting, profane, and disruptive, but it was directed at the trial court alone and in response to its official judgment. (*Id.*) This sort of behavior is precisely the kind which can be punished as contempt of court to vindicate the trial court's authority. *See State v. Webster*, 1st Dist. Hamilton No. C-070027, 2008-Ohio-1636, ¶ 56–58 (contempt of court was appropriate when the defendant interrupted sentencing proceedings by swearing at the trial court and accusing it of being racist). But instead of using a contempt-of-court sanction, the trial court increased Mr. Bryant's sentence by six years, alleging that his outburst reflected a lack of remorse. (Mar. 1, 2019 Sentencing Tr. at 21–22.)

1. *The record clearly and convincingly supports a finding that Mr. Bryant's outburst was not connected to remorsefulness.*

Despite the trial court's attempt to connect Mr. Bryant's behavior to remorsefulness, the record clearly and convincingly does not support any such

connection. There are two separate, but related, reasons for this: First, the proximity of Mr. Bryant's outburst to the announcement of his sentence. (*See id.* at 21.) Second, the content of what Mr. Bryant said. (Mar. 1, 2019 Sentencing Tr. at 21–22.) His words were directed at only the trial court—not the victim or anyone else. (*Id.*) Hence, Mr. Bryant's anger was caused by the trial court's judgment and his response was directed at the trial court alone.

As soon as the trial court said Mr. Bryant's sentence would last 22 years, Mr. Bryant interrupted before the court could finish speaking. (*Id.* at 21.) And every one of Mr. Bryant's comments was directed at the trial court, demonstrating anger over the sentence. His comments ranged from general insults ("[f]uck your courtroom, man"), to accusations that racism played a role in his sentence ("[y]ou racist as fuck"), to a belief that the sentence was predetermined ("[y]ou never gave me a chance"). (*Id.*) Based on these statements, the trial court asserted that the mitigating factor of remorse was no longer present and that "maximum imprisonment is needed." (*Id.* at 22.) But this evaluation was misguided. Given the context and content of Mr. Bryant's statements, the trial court should have held him in contempt if it wanted to incarcerate him for his behavior. *See State v. Webster*, 1st Dist. Hamilton No. C-070027, 2008-Ohio-1636, ¶ 58.

Other surrounding circumstances demonstrate that Mr. Bryant's behavior demonstrated displeasure over his sentence, and not remorselessness. Consider the sentences his co-defendants received, in light of their relative involvement. Mr. Bynes's sentence was ten years less than Mr. Bryant's initial sentence, even though Mr. Bynes helped Ms. Medina case the trailer before the robbery, wielded the gun, and assaulted

Mr. Gonzalez-Hernandez. (T.p. 215–17, 346, 361, 393, 496.) Ms. Medina, who was convicted of a second-degree felony, was sentenced to only 45 days in jail and received community control. *State v. Medina*, Case No. 18 CR 000730, Feb. 19, 2019 Journal Entry of Sentence, Docket Text available at https://bit.ly/31hL3zO (accessed Oct. 19, 2020). Even though the disparities were lawful, they shed light on Mr. Bryant's pre-sentencing expectations and his ensuing response to the sentencing announcement.

2. The Eleventh District did not apply the correct standard of review to Mr. Bryant's claim.

The Eleventh District failed to determine whether the sentence modification was clearly and convincingly unsupported by the record. *See State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 23. Instead, it upheld the increase because the "[trial] court could [have] construe[d] [Mr. Bryant]'s outburst as a sign that his previous statements of remorse and contrition were not genuine and were more a reflection of his desire to receive leniency." *State v. Bryant*, 11th Dist. Lake No. 2019-L-024, 2020-Ohio-438, ¶ 24. This analysis provided too much deference to the trial court because clear and convincing evidence does not need to be "unequivocal." (Emphasis deleted.) *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). So even if it were possible for the trial court to believe that Mr. Bryant's behavior "could" have demonstrated a lack of remorse, that fact would not satisfy the standard of review.

The Eleventh District should have evaluated whether the record created "a firm belief or conviction" that the trial court's modification was unlawful. *Marcum* at ¶ 23; *Cross* at 477. The court was correct that Mr. Bryant could "possess deep regret" for his

conduct, but also have a "highly negative emotional reaction to the [trial] court's sentence." *Bryant* at ¶ 24. But, despite that statement, the court did not determine whether the record clearly and convincingly showed no connection between Mr. Bryant's behavior and his remorsefulness. *See id.* By failing to do so, the Eleventh District deprived Mr. Bryant of "[m]eaningful appellate review" of his sentence. *State v. Johnson*, 8th Dist. Cuyahoga No. 107528, 2019-Ohio-4668, ¶ 34.

3. The Eleventh District's precedent did not compel the outcome it reached.

The Eleventh District's reliance on *State v. Thompson*, 2017-Ohio-1001, 86 N.E.3d 608 (11th Dist.), was misplaced. In that case, a divided panel held that it was lawful for the trial court to increase defendant Thompson's sentence by six months after he made a "vulgar, hostile comment to the prosecutor." *Thompson* at ¶ 3. The comment was made after the sentencing hearing concluded, while Thompson was being escorted out of court. *Id.* After Thompson's comment, the trial court determined that he had "no remorse whatsoever." *Compare id. with* Mar. 1, 2019 Sentencing Tr. at 22. The Eleventh District affirmed the revision. *Thompson* at ¶ 19.

Thompson is distinguishable for two reasons. First, Thompson's statements were directed at the prosecutor. *Id.* at ¶ 3. Second, they were not made in response to a judicial ruling; they occurred after the sentencing hearing was adjourned. *Id.* at ¶ 3. Consequently, Thompson's behavior cannot be explained as anger at the trial court for its judgment, which is what occurred in the present case. In other words, the holding in

Thompson does not answer the question of whether and when a defendant's in-court outburst relates to the defendant's level of remorsefulness.

So, to the extent that the Eleventh District relied on *Thompson*, it erred by doing so. Even if it were correctly decided—which Mr. Bryant does not concede—the trial court's revision of Thompson's sentence was based on distinguishable facts. Thus, this Court can resolve the present case without having to resolve whether *Thompson* was correctly decided.

The *Thompson* dissent would have held that contempt of court was the only proper punishment for Thompson's behavior. *Id.* at ¶ 23. There, as is so here, the defendant's behavior fell within the boundaries of the contempt-of-court statute. *Id.* at ¶ 25. The dissent thought that "the weighing of the seriousness and recidivism factors was complete when the trial court imposed its initial sentences, and should not have been reopened." *Id.* at ¶ 27. Thus, in the dissent's opinion, the trial court acted contrary to law by increasing Thompson's sentence rather than holding him "responsible for the contempt he clearly committed." *Id.* Although there were other complicating facts, the dissent was correct insofar as it would have held that contemptuous behavior unconnected to any sentencing factor does not provide a basis for increasing a defendant's sentence. *Id.*; *see also* R.C. 2929.12.

CONCLUSION

Mr. Bryant's outburst was in response to the trial court's judgment and was directed at the trial court; it was not related to his level of remorsefulness. (Mar. 1, 2019 Sentencing Tr. at 21–22.) The proper remedy for that kind of disruptive, in-court

misbehavior is contempt of court. *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 15, 520 N.E.2d 1362 (1988); R.C. 2705.01. Although some behavior constituting contempt of court may also justify increasing a defendant's sentence, this case does not present such circumstances. Thus, the trial court acted unlawfully by reopening Mr. Bryant's sentencing when his behavior was unrelated to any R.C. 2929.12 sentencing factor. *See State v. Thompson*, 2017-Ohio-1001, 86 N.E.3d 608 (11th Dist.), ¶ 27 (O'Toole, J., dissenting). When the Eleventh District upheld the revision, its analysis was incomplete, thereby providing too much deference to the trial court. *State v. Bryant*, 11th Dist. Lake No. 2019-L-024, 2020-Ohio-438, ¶ 24. It also relied on precedent which did not compel its holding. *Id.* This Court should reverse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **MERIT BRIEF OF APPELLANT MANSON BRYANT** was sent by electronic mail to Jennifer A. McGee, Assistant Prosecuting Attorney, Lake County Prosecutor's Office, Jennifer.McGee@lakecountyohio.gov, on this 20th day of September, 2020.

/s/: *Max Hersch*
Max Hersch (0099043)
Assistant State Public Defender

COUNSEL FOR MANSON M. BRYANT

#1342669

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
PLAINTIFF-APPELLEE,	:	CASE NO. 2020-0599
	:	
VS.	:	ON APPEAL FROM THE
	:	LAKE COUNTY COURT OF APPEALS,
MANSON M. BRYANT,	:	ELEVENTH APPELLATE DISTRICT,
	:	CASE NO. 2019-L-024
DEFENDANT-APPELLANT.	:	
	:	

APPENDIX TO

MERIT BRIEF OF APPELLANT MANSON BRYANT

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**OPINION**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2019-L-024**
MANSON M. BRYANT,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 2018 CR 000732.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Alexandra E. Kutz* and *Jennifer A. McGee,* Assistant Prosecutors, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

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CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Manson M. Bryant, appeals from the judgment of conviction, entered by the Lake County Court of Common Pleas after a jury trial on one count of aggravated burglary, one count of aggravated robbery, each with firearm specifications, one count of having weapons under disability, and one count of carrying concealed weapons. We affirm.

{¶2} In the early hours of July 6, 2018, appellant, with an accomplice, Jeffrey Bynes, broke into the trailer of Arturo Gonzalez ("the victim"), entering through an unlocked window. They proceeded to the victim's bedroom where he slept. The victim awoke and Mr. Bynes pointed a firearm to his head; the victim was instructed not to move as the men placed a blanket over his head and struck him. Appellant and Mr. Bynes left with cash, a laptop computer, a gold ring, and a cell phone. They then fled the scene in a silver BMW SUV owned by one, Kim Walter.

{¶3} In October 2018, the Lake County Grand Jury indicted appellant on seven counts: Count One, aggravated burglary, a felony of the first degree, in violation of R.C. 2911.11(A)(1); Count Two, aggravated burglary, a felony of the first degree, in violation of R.C. 2911.11(A)(2); Count Three, aggravated robbery, a felony of the first degree, in violation of R.C. 2911.01(A)(1); Count Four, kidnapping, a felony of the first degree, in violation of R.C. 2905.01(A)(2); Count Five, abduction, a felony of the third degree, in violation of R.C. 2905.02(A)(2); Count Six, having weapons while under disability, a felony of the third degree, in violation of R.C. 2923.13(A)(2); and Count Seven, carrying concealed weapons, a felony of the fourth degree, in violation of R.C. 2923.12(A)(2). Each count contained a forfeiture specification, pursuant to R.C. 2941.1417 and R.C. 2981.04; and Counts One through Five included either one-year or three-year firearm specifications, pursuant to R.C. 2941.141 and R.C. 2941.145.

{¶4} Appellant entered pleas of "not guilty" to all counts. The matter proceeded to a jury trial on Counts One through Five and a lesser included offense on Count Seven, carrying concealed weapons, a misdemeanor of the first degree, in violation of R.C. 2923.12(A)(2) ("Jury's Count Six"). Appellant waived his right to a jury trial on

Counts Six and Seven, which were tried to the bench. The jury found appellant guilty on Counts One through Five and the court found appellant guilty on Counts Six and Seven. For the purpose of sentencing, the trial court merged the two counts of aggravated burglary (Counts One and Two), the abduction and kidnapping charges (Counts Four and Five), the two counts of carrying a concealed weapon (Jury's Count Six and Count Seven). The court also merged the abduction and kidnapping charges (Counts Four and Five) with the aggravated robbery conviction (Count Three) as well as the one-year and three-year associated firearm specifications in Counts One and Three.

{¶5} At sentencing, the trial court initially ordered appellant to serve terms of imprisonment of eight years on Count One; eight years on Count Three; 36 months on Count Six; and 18 months on Count Seven. The trial court also ordered a mandatory three-year term for the firearm specification on Count One and three years for the firearm specification on Count Three. Counts One and Three, with their associated firearm specifications, were ordered to be served consecutively to on another. The sentences for Counts Six and Seven were ordered to run concurrently with Counts One and Three, for an aggregate term of 22 years.

{¶6} After imposing the above sentence, appellant verbally lashed out at the trial judge, using profanities and accusing the judge of racism. As a result, the court reconvened and increased the terms of imprisonment on Counts One and Three to the maximum, 11 years each. Appellant's aggregate prison term was accordingly increased to 28 years. Appellant now appeals. His first assignment of error provides:

{¶7} "The trial court erred when it imposed an additional six years on Bryant's sentence after his outburst in court."

{¶8} "Appellate courts "'may vacate or modify any sentence that is not clearly and convincingly contrary to law'" only when the appellate court clearly and convincingly finds that the record does not support the sentence." *State v. Miller*, 11th Dist. Lake No. 2018-L-133, 2019-Ohio-2290, ¶10, quoting *State v. Wilson*, 11th Dist. Lake No. 2017-L-028, 2017-Ohio-7127, ¶18.

{¶9} Appellant does not take issue with the trial court's imposition of the original 22-year term of imprisonment; and the record demonstrates the trial court considered the requisite statutory points and made the necessary findings for imposing consecutive sentences. With this in mind, appellant argues the trial court erred when it imposed an additional six years onto his original sentence. Appellant maintains the proper means of penalizing him for his tirade was via a direct contempt order. In effect, appellant argues the trial court's actions were contrary to law. We do not agree.

{¶10} After initially imposing the aggregate 22-year term, the following exchange occurred:

> {¶11} [Appellant:] F*** your courtroom, you racist a** b***. F*** your courtroom, man. You racist as f***. You racist as f***. Twenty-two f***ing years. Racist a** b****. You ain't s***.
>
> {¶12} [Trial court:] Remember when I said that you had some remorse?
>
> {¶13} [Appellant:] You ain't s*** ... You never gave me probation.
>
> {¶14} [Trial court:] Wait a minute.
>
> {¶15} [Appellant:] You never gave me a chance.
>
> {¶16} [Trial court:] When I said that you had a certain amount of remorse, I was mistaken (Defendant continues yelling) The court determines - -
>
> {¶17} [Appellant:] F*** you.

{¶18} [Trial court:] The court determines that maximum imprisonment is needed, so it's eleven years on Count 1 and eleven years on Count 3.

{¶19} [Appellant:] F*** that courtroom. You racist b****. You ain't s***. Let me out the courtroom, man. (More shouting and swearing.)

{¶20} In *State v. Thompson*, 11th Dist. Lake No. 2016-L-036, 2017-Ohio-1001, this court was faced with a similar scenario and upheld the trial court's actions. In *Thompson*, the trial court sentenced the defendant to an aggregate term of 18 months in prison for two felony-five convictions. After court was adjourned and as the defendant was exiting, the trial judge overheard the defendant make a vulgar, hostile comment to the prosecutor. The trial judge went back on record, proceeded to reconsider the defendant's level of remorse, and increased the term of imprisonment by three months on each count for a total of 24 months.

{¶21} On appeal, the defendant took issue with the trial court's actions, arguing his outburst was not due to a lack of remorse, but his bipolar disorder. The defendant urged this court to therefore reverse the sentence and direct the trial court to apply the law of contempt. In rejecting the defendant's position, this court stated:

{¶22} "A criminal sentence is final upon issuance of a final order." *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, ¶11. *See also State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 337 (1997) (a trial court possessed authority to vacate a finding of guilt and imposition of sentence and order the defendant to face trial on a more serious charge because the judgment had never been journalized by the clerk pursuant to Crim.R. 32). A judgment of conviction is final when the order sets forth (1) the fact of the conviction; "(2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, syllabus, as modified by *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, syllabus.

{¶23} The judgment on sentence was not final when the trial court went back on record and increased appellant's sentence. Accordingly,

> the trial court possessed the authority to change its previous sentence and, after noting appellant's outburst reflected a lack of remorse, increase the penalty. *Thompson*, *supra*, at ¶13-14.

{¶24} As in *Thompson*, the trial court's initial order was not final upon the court's pronouncement; the court, therefore, possessed the authority to revisit the order and increase the same. It bears noting that appellant's sudden verbal eruption does not necessarily reflect a lack of remorse; after all, appellant could possess deep regret for the crimes he committed and the harm he caused and, at the same time, have a highly negative emotional reaction to the court's sentence. Still, the court could construe appellant's outburst as a sign that his previous statements of remorse and contrition were not genuine and were more a reflection of his desire to receive leniency. We accordingly hold that although the trial court could have held appellant in direct contempt for his paroxysm, the trial judge's action of increasing appellant's sentence by six years was not contrary to law.

{¶25} Appellant's first assignment of error lacks merit.

{¶26} Appellant's second assignment of error provides:

{¶27} "The convictions were against the manifest weight of the evidence and not supported by sufficient evidence."

{¶28} When a defendant moves the trial court pursuant to Crim.R. 29, he or she is challenging the sufficiency of the evidence. A "sufficiency" argument raises a question of law as to whether the prosecution offered some evidence concerning each element of the charged offense. *State v. Windle,* 11th Dist. Lake No. 2010-L-0033, 2011-Ohio-4171, ¶25. "[T]he proper inquiry is, after viewing the evidence most favorably to the prosecution, whether the jury could have found the essential elements of the crime

proven beyond a reasonable doubt." *State v. Troisi,* 179 Ohio App.3d 326, 2008-Ohio-6062, ¶9 (11th Dist.).

{¶29} In contrast, a court reviewing the manifest weight observes the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Schlee,* 11th Dist. Lake No. 93-L-082, 1994 WL 738452, *5 (Dec. 23, 1994).

{¶30} Appellant first argues the evidence did not adequately establish he participated in the criminal acts with Mr. Bynes. We do not agree.

{¶31} The victim testified that, on the morning of July 6, 2018, he was awoken by two black men wearing dark clothing. Both appellant and Mr. Bynes are African American males. The victim stated one of the men was brandishing a firearm and the firearm he observed was consistent with the weapon found in the room in which Mr. Bynes slept.

{¶32} Further, Ms. Medina testified that she visited the victim at approximately 4:30 a.m. on July 6, 2018 to obtain money. The victim obliged and she, as well as Mr. Bynes, returned to the condominium owned by one, Brian McCauley, where they were temporarily staying in a guest bedroom. Once there, Ms. Medina advised Mr. Bynes how to gain access to the victim's trailer, i.e., via a specific window; and Ms. Medina also told Mr. Bynes where the victim kept his money and laptop computer. She asserted she then witnessed appellant and Mr. Bynes don black clothing and observed Mr. Bynes place his firearm in his waist band. The men left and Ms. Medina observed

them leaving in a silver BMW SUV owned by Kim Walter. Shortly thereafter, Ms. Medina testified appellant and Mr. Bynes returned to the condo with the victim's wallet, cash, ring, and his laptop computer.

{¶33} Moreover, a surveillance camera from a business across the street from the victim's trailer park recorded a silver SUV arriving at the scene around 5:30 a.m. and leaving around 5:40 a.m. Ms. Walter, who stayed at Mr. McCauley's condo from time to time, testified she often allowed appellant and Ms. Medina to drive her vehicle. Ms. Walter testified she had stayed at the condo from July 5 to July 6, 2018. And she identified the silver SUV seen arriving and leaving the trailer park as her vehicle. Ms. Walter additionally testified Mr. Bynes owned a firearm, which she observed in his waistband on the morning of the incident; she further observed appellant and Mr. Bynes return to the condo and hastily run to the condo's second floor after the time of the robbery.

{¶34} In light of the foregoing, we conclude the state adduced sufficient, circumstantial evidence to establish appellant's identity as one of the individuals who broke into the victim's home beyond a reasonable doubt.

{¶35} Next, appellant argues he never had control or brandished the firearm at issue and, as such, there was no proof he had possessed the firearm. We disagree.

{¶36} Appellant was convicted of aggravated robbery, in violation of R.C. 2911.01(A)(1); aggravated burglary, in violation of R.C. 2911.11(A)(1); carrying concealed weapons, in violation of R.C. 2923.12(A)(2); and having weapons under disability, in violation of R.C. 2923.13(A)(2). The aggravated robbery statute, R.C. 2911.01(A)(1), provides: "No person, in attempting or committing a theft offense as

defined in Section 2913.01(K) of the Revised Code, * * * shall do any of the following: (A) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it or use it." Part of the definition of a "theft offense" under R.C. 2913.01(K)(4) includes complicity in committing any statutory theft offense. Moreover, R.C. 2911.11(A)(1) is included in the definition of a theft offense pursuant to R.C. 2913.01(K)(1) and, thus, similar to aggravated robbery, aggravated burglary is a statutorily defined "theft offense" that envelops complicity to commit the same. Both the carrying concealed weapons and having weapons under disability convictions presuppose the possession of a firearm or dangerous ordnance.

{¶37} R.C. 2923.03(F) provides: "Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, *or in terms of the principal offense*." (Emphasis added.) As such, an unarmed accomplice may be convicted under R.C. 2911.01(A), R.C. 2911.11(A), R.C. 2923.12(A)(2), and R.C. 2923.13(A)(2), as well as with firearm specifications, and punished as if he were a principal. *State v. Chapman*, 21 Ohio St.3d 41, 42 (1986); *State v. Johnson*, 8th Dist. Cuyahoga No. 107427, 2019-Ohio-2913, ¶22. "In such a case, the actions of the principal are imputed to the accomplice, and the accomplice 'may be found to have committed every element of the offense committed by the principal, including possession of the weapon.'" *State v. Frost*, 164 Ohio App.3d 61, 2005-Ohio-5510, ¶20 (2d Dist.) quoting *State v. Letts*, 2d Dist. Montgomery App. No. 15681, 2001 WL 699537 (June 22, 2001).

{¶38} In this matter, although the jury could not conclude appellant himself actually possessed the firearm during the commission of the offenses, it could find him guilty, beyond a reasonable doubt as an aider and abetter. As there was sufficient, credible evidence that Mr. Bynes carried, brandished, and even struck the victim with a firearm during the commission of the crimes, there was likewise sufficient, credible evidence to find appellant guilty based upon his complicity.

{¶39} Finally, appellant asserts the convictions are against the manifest weight of the evidence because Ms. Medina's testimony was not credible; to wit, she was an admitted drug addict who received a direct benefit for her testimony. We do not agree.

{¶40} During cross-examination of Ms. Medina, defense counsel elicited testimony that she had pleaded guilty to a charge relating to her participation in the underlying incident. Ms. Medina also testified she had not been sentenced yet "because [the state] wanted [her] to testify." She asserted she did not want to go to prison, but was aware that she might. During a line of questions where defense counsel suggested she was a cooperating witness only because she sought leniency, Ms. Medina stated: "I'm not trying to get out of anything that I did. I have committed a crime, too. I never tried to get out of anything I did."

{¶41} Witness credibility rests solely with the fact finder, and an appellate court may not substitute its judgment for that of the jury. *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). Hence, in weighing the evidence submitted at a criminal trial, an appellate court must give substantial deference to the jury's determinations of credibility. *State v. Tribble*, 2d Dist. Montgomery No. 24231, 2011-Ohio-3618, ¶30. "The jury is entitled to believe all, part, or none of the testimony of any witness." *State v. Archibald*, 11th Dist.

Lake Nos. 2006-L-047 and 2006-L-207, 2007-Ohio-4966, ¶61. "The trier of fact is in the best position to evaluate inconsistencies in the testimony by observing the witness's manner and demeanor on the witness stand - attributes impossible to glean through a printed record." *State v. Williams*, 11th Dist. Lake No. 2012-L-078, 2013-Ohio-2040, ¶21.

{¶42} The jury was aware of Ms. Medina's issues with drugs and was aware that she was instrumental in the burglary and robbery of the victim. Defense counsel established that she was providing testimony for the state pending her sentencing and, as a result, favorable testimony could result in a favorable sentencing recommendation from prosecutors. In light of these credibility issues, the jury still elected to believe Ms. Medina's testimony. We cannot say it lost its way.

{¶43} Appellant's second assignment of error lacks merit.

{¶44} Appellant's third assignment of error provides:

{¶45} "The trial court erred when it failed to merge the aggravated robbery with aggravated burglary."

{¶46} Appellant contends the trial court erred in failing to merge his convictions for aggravated burglary, aggravated robbery, and the associated firearm specifications because the offenses involved one victim and a continuous course of conduct. We do not agree.

{¶47} R.C. 2941.25 "incorporates the constitutional protections against double jeopardy. These protections generally forbid successive prosecutions and multiple punishments for the same offense." *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, ¶7. "Where the same conduct by defendant can be construed to constitute two or

more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." R.C. 2941.25(A). "[A] defendant whose conduct supports multiple offenses may be convicted of all the offenses if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus." *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, at paragraph three of the syllabus.

{¶48} In the sentencing memorandum, while seeking merger of various counts of which appellant was found guilty, defense counsel did not move the court to merge the aggravated robbery and aggravated burglary counts. We shall therefore review the issue for plain error. In light of the evidence, we conclude the offenses at issue were committed separately and accordingly find no error.

{¶49} R.C. 2911.11(A)(1), defining aggravated burglary, provides:

> {¶50} (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:
>
> {¶51} (1) The offender inflicts, or attempts or threatens to inflict physical harm on another[.]

{¶52} Under the statute, the aggravated burglary in this case was complete when appellant and Mr. Bynes, who possessed a firearm, broke into the victim's residence, while he was present, with the intent to commit theft and attempted to cause the victim physical harm. Moreover, we set forth the elements of robbery under appellant's second assignment of error. That crime was complete when appellant and Bynes, while possessing and brandishing a firearm, stole the victim's money, ring, and

laptop. As the second query of the *Ruff* test is answered in the affirmative, the offenses were committed separately and appellant could be convicted of each.

{¶53} Appellant's third assignment of error lacks merit.

{¶54} For the reasons discussed in this opinion, the judgment of the Lake County Court of Common Pleas is affirmed.

MATT LYNCH, J.,

MARY JANE TRAPP, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF LAKE	)	**ELEVENTH DISTRICT**

STATE OF OHIO,

Plaintiff-Appellee,

JUDGMENT ENTRY

CASE NO. 2019-L-024

- vs -

MANSON M. BRYANT,

Defendant-Appellant.

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

JUDGE CYNTHIA WESTCOTT RICE

MATT LYNCH, J.,

MARY JANE TRAPP, J.,

concur.