

IN THE SUPREME COURT OF OHIO

WARREN ROPP	:	Case: 20-1354
APPELLANT,	:	On Appeal from the
	:	Champaign County
V.	:	Court of Appeals,
	:	Second Appellate District
STATE OF OHIO	:	
APPELLEE.	:	C.A. Case No. 2018-CA-44

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT WARREN ROPP

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Warren Ropp  
#A749280  
Madison Correctional Institution  
P.O. Box 740  
London, Ohio 43140

APPELLANT, PRO SE

Jane Napier (COUNSEL OF RECORD)  
Assistant Prosecuting Attorney  
Appellate Division  
Champaign County Prosecutor's Office  
200 N. Main Street, Room 309  
Urbana, Ohio 43078  
Tel. #(937) 484-1900

COUNSEL FOR THE APPELLEE,  
STATE OF OHIO

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## TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....	2
<u>Proposition of Law No. I:</u> The appellate court prejudiced an appellant by upholding a sentence in contravention of Ohio's felony sentencing statutes.....	2
<u>Proposition of Law No. II:</u> The appellate court prejudiced an appellant by upholding an improper sentence where the State failed to prove an essential element of the offense R.C. 2923.162(A)(3).....	3
<u>Proposition of Law No. III:</u> The appellate court prejudiced an appellant by upholding an conviction where State failed to prove the church was an occupied structure/habitation of Gregory Ervin.....	3
<u>Proposition of Law No. IV:</u> The appellate court prejudiced an appellant by upholding an conviction where the jury verdict forms were defective.....	4
<u>Proposition of Law No. V:</u> The appellate court prejudiced an appellant by upholding an conviction where the trial court failed to merge the firearm specifications 2 and 3 with Count 5.....	4
<u>Proposition of Law No. VI:</u> The appellate court prejudiced an appellant by upholding an conviction where R.C. 2923.16(B)(1) was unconstitutional when applied to the Appellant and should have been vacated.....	5
<u>Proposition of Law No. VII:</u> The appellate court prejudiced an appellant by upholding an conviction where the trial counsel was ineffective counsel to the prejudice of the appellant.....	5
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6

**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This cause presents two issues for the future of the Ohio Rules and Procedure of Law:

(1) whether or not the trial courts can prejudice an appellant by sentencing him without considering the factors required under Ohio's sentencing statutes; and (2) whether or not the trial courts can prejudice an appellant by improperly attaching consecutive terms of incarceration when the record does not support such.

In this case, the court of appeals upheld a conviction where, through plea agreement, the appellant entered sentencing under the impression that the Ohio Revised Code for sentencing guidelines would be correctly followed in determining the length and concurrency of prison terms.

The decision of the court of appeals threatens the structure of the Ohio Revised Code and the legislative intent when they created the overriding factors required when considering sentencing. Moreover, the court of appeals' decision leads to the example of abuse of discretion. It urgently needs correction by this court.

The implications of the decision of the court of appeals affect every appellant that goes before them in order to receive fairness in the judicial system. The nature of the case should not be the motivation to bypass the Ohio Rules and Procedures in a way that leads to prejudice by the courts and sentences that are contrary to law. It sets a precedent that would exclude R.C. 2929.11-14 if upheld.

Finally, this case involves a substantial constitutional question. The decision offends Ohio's constitutional scheme over the power of the General Assembly. This court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

## STATEMENT OF THE CASE AND FACTS

The Champaign County Grand Jury indicted Mr. Ropp on June 4, 2018 to five counts. Count I, Improper Handling Firearms in a Motor Vehicle (F4) R.C. 2923.16(B)(1); Count II, Improper Handling Firearms in a Motor Vehicle (F4) R.C. 2923.16(a)(1); Count III, Tampering with Evidence (F3) R.C. 2921.12(A)(1)(B); Count IV, Discharge of Firearm on or near Prohibited Premises (F3) R.C. 2923.162(A)(3)(C)(2) with Firearm Specifications; Count V, Improperly Discharging a Firearm at or into a Habitation (F2) R.C. 2923.161(A)(1)(C) with Firearm Specifications.

On November 19, 2018, Mr. Ropp was found guilty on Counts I, II, IV, and V with all 3 firearm specifications. Appellant was acquitted on Count III.

On November 27, 2019, the Court sentenced Mr. Ropp to an aggregate sentence of 15 years. Counts II and IV were merged where the Court held that they were of similar import. As to Count I, 18mos.; Count 4, 36mos.; Count 5, 7yrs.; the firearm specifications were stacked to run 3yrs. and 5yrs. to be consecutive to one another. Counts I and IV were ran concurrent to Count 5. Now comes the Appellant before this court filing a notice of appeal and request to accept jurisdiction in such matter.

### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

#### **Proposition of Law No. I: The appellate court prejudiced an appellant by upholding a sentence in contravention of Ohio's felony sentencing statutes.**

In sentencing the Appellant, the trial court imposed sentences on four counts that were, according to R.C. 2941.25, allied offenses of similar import. The basis of Ohio's sentencing framework is found in R.C. 2929.11 and 2929.12. Although other sections bear on sentencing decisions, R.C. 2941.25 is key.

In *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, this Court mandated in order to analyze offenses to determine if they are allied offenses of similar import, a court looks to “three separate factors”.

Since the trial court held that Counts II and IV were of similar import, the focus must be on Counts I and V. As stated in the Appellant's brief, the conduct was essentially the same as he had a firearm in all four counts. Accordingly, all four counts are a continual act. Each of the counts requires the other as a basis. There was a firearm in a motor vehicle. The firearm was discharged and it hit a building, intending to annoy Mr. Ervin by damaging his property. (App. Brief, 2018CA044, pgs. 16-17)

All counts should have been merged and treated as one.

**Proposition of Law No. II: The appellate court prejudiced an appellant by upholding an improper sentence where the State failed to prove an essential element of the offense R.C. 2923.162(A)(3).**

The State failed to prove that the Appellant fired a shot and the shot came from a public road. R.C. 2923.162(A)(3) mandates the State prove beyond a reasonable doubt the following elements: "No person shall do any of the following: (3) Discharge a firearm upon or over a public road or highway." Consequently, the State had to prove Warren not only fired a weapon, but was on or over a public road or highway at the time. The State provided a Bill of Particulars which affirmatively stated it would prove there was a "public roadway".

The Jury Instructions regarding the definition of "[p]ublic road" and "highway" were missing a key term (private property/roads) from the prohibition. (Tr. 3 Pg. 638 Line 13-21) There was no evidence Warren discharged a firearm from a public road or highway, nor any proof that he was even on/around either Archer or Church Street at the time the shots occurred, the most essential element of R.C. 2923.162(A)(3).

**Proposition of Law No. III: The appellate court prejudiced an appellant by upholding a conviction where State failed to prove the church was an occupied structure/habitation of Gregory Ervin.**

R.C. 2923.161(A)(1) states, "No person, without privilege to do so, shall knowingly do any of the following: (1) Discharge a firearm at or into an occupied structure that is a permanent or temporary

habitation of any individual....” The jury instruction for habitation was: “.....the place where a person lives.” (Tr. 3 Pg. 647 Line 16-17) Mr. Ervin testimony proved the church was not his or anyone's habitation. Through the bill of particulars, the State avowed it would prove the church was “...a permanent or temporary habitation of Greg Eugene Ervin.” Greg Ervin affirmatively refuted the State's position that the “Church” was Mr. Ervin's habitation as he testified he lived at 10841 Archer Street, Rosewood, Ohio in Champaign County on August 21, 2017. (Tr. 1 Pg. 138)

**Proposition of Law No. IV: The appellate court prejudiced an appellant by upholding an conviction where the jury verdict forms were defective.**

The verdict forms provided to the jurors only reflected they '(circle your choice)' as to the elements of the alleged crimes. In *State v. Davis*, 2003-Ohio-4839, this Court held a verdict from must comply with the instructions given to the jury. Id. at ¶52. The verdict forms did not state the elements of the crimes alleged in each count, nor did the verdict forms state the jury finds the defendant guilty beyond a reasonable doubt.

**Proposition of Law No. V: The appellate court prejudiced an appellant by upholding an conviction where the trial court failed to merge the firearm specifications 2 and 3 with Count 5.**

The Court sentenced the Appellant to 15 years in prison. He was sentenced as follows: Count V: 7yrs., Specification 2: 3yrs., Specification 3: 5yrs., all to be served consecutively. As to the Specifications to Count V, they should have been merged. The act on which the specifications are based are pat of continuous conduct. (Bill of Particulars)

*State v. Like*, 2008-Ohio-1873, stated “Consequently, should this Court sustain this point on appeal, this Court should merge the specification sentences”. Thus, the trial court should have merged the sentences on the Specifications 2 and 3 to Count V.



**Proposition of Law No. VI: The appellate court prejudiced an appellant by upholding an conviction where R.C. 2923.16(B)(1) was unconstitutional when applied to the Appellant and should have been vacated.**

Both the Second Amendment to the United States Constitution and Article I §4 of the Ohio Constitution guarantee to the citizens the right to possess and keep firearms. Moreover, Ohio is an open carry state which permits citizens to carry loaded firearms in public. In the case at bar, the Appellant allegedly had a rifle in the truck. There is no evidence of the rifle being loaded or any ammunitions being in the cabin of the truck. In fact, the ammunition could have been in the bed of the truck which for to fire the rifle would require him to exit the vehicle, retrieve ammunition from the truck bed, load the weapon and fire it from private property or any other non-public area. Therefore, as applied the statute is unconstitutional and on its face is unconstitutional because it inhibits the right to bear arms.

**Proposition of Law No. VII: The appellate court prejudiced an appellant by upholding an conviction where the trial counsel was ineffective counsel to the prejudice of the appellant.**

In *Lockhart v. Fretwell* (1993), 506 U.S. 364 the United States Supreme Court divided the analysis under Strickland in to two parts. First, was counsel's performance deficient in light of current standards. Second, prejudice is determined by whether or not the proceedings were unfair.

Clearly, the trial was not fair in that number 6 essentially terminates the entire State's case based upon what the State said it would prove in the Bill of Particulars. Adding the other defects makes the entire trial unfair.

**CONCLUSION**

For the reasons above, this case involves matters of public and great general interest and a substantial constitutional question. The Appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

Warren Ropp #A749280  
Warren Ropp #A749280  
APPELLANT, PRO SE

**Certificate of Service**

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. Mail to counsel for appellee, Jane Napier, Champaign County Prosecutor, 200 N. Main Street, Urbana, Ohio 43078 on December 13, 2020.

Warren Ropp #A749280  
Warren Ropp #A749280  
APPELLANT, PRO SE