

IN THE SUPREME COURT OF OHIO

Robert Shepard,)
Appellant,) On Appeal from the Cuyahoga County
vs.) Court of Appeals, Eighth Appellate District
State of Ohio,) Court of Appeals Case No. 112225
Appellee.)

MOTION TO RECONSIDER

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MEMORANDUM IN SUPPORT

If there was ever a case that met both the requirements of being a case of general public interest, or one where this Honorable Court needed to impose its authority over its precedent, this is that case.

Robert Shepard will spend the rest of his life in prison even though the State concedes that there is no direct evidence that Robert even knew that a shooting was going to occur, let alone acted with the culpability required to be found guilty. *State v. Shepard*, 8th Dist. Cuyahoga No. 112225 at ¶ 4.

In fact, a close review of the record demonstrates that there were in fact *two shootings* on this day involving the victim in the case. The first shooting occurred at Cleveland's Lonnie Burten Center ("Burten Center") at approximately 7:54 pm and was captured on video. *Shepard* at ¶ 37-38. The victim in this case, Frank Q. Jackson, was at the Burten Center at the time of the shooting, and at 8:03 p.m., can be seen on video attempting to assist the first shooting victim, a twelve-year-old boy. *Sheppard* at ¶ 39. It is not in dispute – Robert Sheppard was nowhere near this first shooting, and there is no evidence he was even aware of it. *Sheppard* at ¶ 44. The State tried to advance the theory that the 12-year-old boy, whom the passengers in the Chrysler murdered, was really mistaken for the adult victim in this case. The **only interaction Robert had with the Chrysler lasted for seconds** and could be as simple as an innocent encounter.

At most, the surveillance tapes submitted at trial showed that there was a brief interaction between "what appeared to be the person riding the dirt bike" and the Chrysler from which the shooter in this case emerged, occurring for mere seconds. *Sheppard* at ¶ 44-45. The shooting in this matter occurred around 9:10 pm. *Sheppard* at ¶ 48. Again, it is not in dispute that Robert

Sheppard was not present for the shooting, nor is there any evidence showing that he knew or supported it in any way.

Further the Court of Appeals committed a confounding error when it relied on specific purported “evidence” to refute Appellant’s Assignments of Error I and II. This error is confounding because it directly contradicts itself in other parts of the decision. For example, the Court of Appeals held that “[t]he cell phone evidence also established that the owner of the Chrysler and the 9510 number made calls to each other the day of the shooting.” *Sheppard* at ¶ 65. Yet, it also noted that despite police efforts, the Chrysler, nor its owner, was ever located or identified. *Sheppard* at ¶ 56. The severity of this case demands that we ask how the Court of Appeals could conclude that the owner of the Chrysler and the 9510 number made calls to each other **if the identities of either party are unknown.** Moreover, the record demonstrates that the victim in this case called the 9510 number several times.

Allowing a jury to stack impermissible inference upon impermissible inference leads to injustice, where as here the Court of Appeals and the State made multiple inferences to conclude the 9510 number and the owner of the Chrysler must have been in communication somehow. Further, doing so also happens to be in direct conflict with well-established case law in Ohio. *See Hurt v. Charles J. Rogers Transp. Co.*, 164 Ohio St. 329, 333, 130 N.E.2d 820, 823 (1955) (“An inference which is based solely and entirely upon another inference and which is unsupported by any additional fact or another inference from other facts is an inference upon an inference and is universally condemned.”).

Yet, that’s exactly what happened in this case. As a direct (not circumstantial) result, a young man will now spend the rest of his life behind bars.

This Honorable Court is not a court required to engage in mere error correction, however, this case cries out for the exercise of this Honorable Court's awe inspiring power to take up cases of great public interest and those that require uniformity in the application of precedent. History is full of cases where young, innocent, men sit in prison for decades convicted on more evidence than was presented here only to find out that they were wrongfully convicted.

This is Robert's last chance at a fair review of his conviction, a conviction that is unquestionably based not on direct evidence but upon questionable circumstantial evidence bolstered by improper testimony from a detective.

This Honorable Court should take the opportunity to at least review the record in this case. The record is critical because the detectives who investigated this matter testified, unequivocally that (1) there is absolutely no evidence to suggest that Mr. Shepard even (1) knew that the decedent would be shot; (2) there was no evidence that Mr. Shepard even wanted the decedent to be shot; and (3) there was no evidence to believe that Mr. Shepard even wanted the decedent to be harmed.

Sheppard Tr. 664-668.

In addition, the State was permitted, in violation of this Honorable Court's holding to the contrary in *State v. Ricks*, 136 Ohio St.3d 356, 2013-Ohio-3712, to allow hearsay statement after hearsay statement into the trial to "establish Det. Bauhof's investigation of the events and individuals involved in the shooting of the victim." *Sheppard* at ¶ 86.

The Eight District Court of Appeals ruled that this was permissible based on the very cases that this Honorable Court overruled in *Ricks*. The testimony did not actually establish who the shooter was, or even who the driver of the Chrysler was, but instead was simply used as a collateral attack to try to tie two individuals with horrible criminal records to Robert. *Sheppard*.

This Honorable Court has the opportunity to make it clear that testimonial statements made by individuals whom a detective speaks to violate a defendant's rights to confront witnesses against him under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 10, of the Ohio Constitution when those testimonial statements are admitted at trial.

Moreover, a defendant's same rights are violated when an investigator is allowed to introduce the criminal records of other individuals at trial for the purpose of showing that those people might have the propensity to, or reason to, commit a murder in a specific case even though there is absolutely no evidence they were ever involved. This testimony again violates a defendant's right to confront witnesses against him.

CONCLUSION

For the reasons discussed above, this case involves substantial constitutional questions for which leave to appeal should be granted. Further, the case is of general public interest. Appellant respectfully moves this Honorable Court to accept jurisdiction in this case so that the issues presented may be reviewed on the merits.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Motion to Reconsider was sent by ordinary U.S. Mail on this 24th day of May 2024 to:

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