[Cite as *State v. Cook*, 2025-Ohio-5148.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, Plaintiff - Appellee -vs- CHRISTOPHER COOK, Defendant – Appellant	Case No. 2025 CA 00010 Opinion And Judgment Entry Appeal from the Fairfield County Court of Common Pleas, Case No. 2024 CR 193 Judgment: Affirmed in Part, Remanded in Part Date of Judgment Entry: November 12, 2025

BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: R. KYLE WITT, Fairfield County Prosecutor and MARK A. BALAZIK, Assistant Prosecuting Attorney, for Plaintiff-Appellee; CHRISTOPHER BAZELEY, for Defendant-Appellant.

OPINION

Montgomery, J.

{¶1} Defendant-Appellant, Christopher Cook, appeals from the jury verdict in the Fairfield County Court of Common Pleas finding him guilty of Aggravated Possession of Drugs and one count of Tampering with Evidence. For the reasons below, we affirm in part, and remand in part.

STATEMENT OF FACTS

{¶2} The jury trial transcript reveals the following relevant facts. On April 19, 2024, Corporal Lance Shanes ("Corporal Shanes"), of the Fairfield County Sheriff's

Office, conducted a traffic stop on Defendant-Appellant, Christopher Cook ("Appellant") due to an outstanding warrant. Corporal Shanes was patrolling the area when a "Flock" alert went off, notifying him that a license plate number was linked to an active warrant. Corporal Shanes passed the vehicle, saw Appellant driving, and turned his cruiser around to conduct a traffic stop. He turned on his emergency lights, without a siren, stopped and exited his cruiser, and started to walk towards Appellant's vehicle. As Corporal Shanes approached, Appellant "takes off from the stop, turning left" through an intersection, forcing Corporal Shanes to run back to his cruiser, turn on his sirens, and follow Appellant. *Trial Tr.*, pp. 183-188. Appellant drove a couple hundred yards and then stopped in a nearby parking lot.[1]

{¶3} Appellant's "flight" lasted just long enough for his passenger - Shannon Jones - to throw a baggie out of the passenger side window. The baggie contained 10.20 grams of methamphetamine. An eyewitness, Lowell Meade, saw Jones throw the baggie out and Meade informed Corporal Shanes of that fact. Corporal Shanes detained both Jones and Appellant at the scene, conducted a search of the vehicle, and recovered a meth pipe in the glovebox.

{¶4} At trial, Jones testified that as Appellant drove off from Corporal Shanes, Appellant asked him to toss the baggie of meth out the window. *Tr.*, pp. 144-145. Jones complied with Appellant's request because he did not want to see anyone get into trouble. Jones further testified that although Jones kept Appellant's truck at his house the night before, he had not seen the drugs at any time prior to Appellant giving him the baggie. Jones was ultimately charged with the same two counts as Appellant. Jones pled guilty

[1] Corporal Shanes' Axon body camera was admitted as State's Exhibit 1.

and was sentenced to drug rehabilitation approximately five months before Appellant's jury trial.

STATEMENT OF THE CASE

{¶5} On April 25, 2024, Appellant was indicted on one count of Aggravated Possession of Drugs in violation of R.C. 2925.11, a felony of the third degree; and one count of Tampering with Evidence in violation of R.C. 2921.12, a felony of the third degree. On December 26, 2024, the state obtained a superseding indictment adding one count of Aggravated Trafficking of Drugs in violation of R.C. 2925.11, a felony of the third degree. The additional charge stemmed from a series of text messages - dated prior to April 19, 2024, and recovered from Appellant's cell phone after his arrest - and the state claimed the messages indicated drug sales activity. Said text messages included an individual, Samuel Kness, who was willing to testify on behalf of the State.

{¶6} Appellant pled not guilty to all three counts and proceeded to a jury trial. Prior to trial, Appellant filed a motion to sever the Aggravated Trafficking of Drugs count from the remaining two counts. On January 13, 2025, the trial court overruled the motion. On January 14 and 15, 2025, a jury trial took place. The State presented the following witnesses: 1) eyewitness Lowell Meade; 2) Shannon Jones; 3) Samuel Kness; 4) Officer Scott Hargrove; 5) Matthew Rosebrook; and 6) Corporal Lance Shanes. Defense counsel thoroughly cross-examined each witness.

{¶7} After closing arguments, the trial court granted Appellant's Crim.R. 29 Motion regarding the Aggravated Trafficking of Drugs, thereby dismissing that count due to insufficient evidence. The trial court specifically instructed the jury to disregard all text messages introduced by the State at trial as well as Samuel Kness' testimony in its

entirety. The jury deliberated and ultimately found Appellant guilty on the two remaining counts – aggravated possession of drugs and tampering with evidence.

{¶8} On February 6, 2025, the trial court sentenced Appellant to an aggregate term of four years in prison and a two-year term of Post Release Control (PRC). On March 6, 2025, Appellant filed a timely notice of appeal.

ASSIGNMENTS OF ERROR

{¶9} "I. THE TRIAL COURT ERRED BY OVERRULING COOK'S MOTION TO SEVER THE AGGRAVATED TRAFFICKING CHARGE FROM THE REMAINING CHARGES FOR TRIAL."

{¶10} "II. COOK'S CONVICTIONS FOR AGGRAVATED POSSESSION AND TAMPERING ARE NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND AGAINST THE WEIGHT OF THE EVIDENCE."

{¶11} "III. THE TRIAL COURT ERRED WHEN IT ALLOWED OTHER ACTS EVIDENCE OF A JAIL PHONE CALL WHERE COOK STATED HE WAS THANKFUL FOR AN OPPORTUNITY TO DETOX."

{¶12} "IV. THE TRIAL COURT FAILED TO PROPERLY IMPOSE PRC."

ANALYSIS

Evidence of Jail Phone Call

{¶13} For ease of discussion, we will address the assignments of error out of order. Because the third assignment of error relates to admission of evidence, we address it first. Appellant claims the trial court improperly admitted "other acts" evidence of Appellant's jail phone call to his stepfather, and that such evidence was highly prejudicial to Appellant. Appellant's argument is without merit.

{¶14} While awaiting trial, Appellant had a phone call with his stepfather and told him that his arrest was a "blessing in disguise" because it gave him an opportunity to detox since he could not do it on his own. Officer Scott Hargrove testified regarding the

phone call, and it was played for the jury. Appellant did not object to playing the phone call for the jury and did not object to Officer Hargrove's testimony. Generally, an appellate court need not consider error that was not called to the attention of the trial court at a time when the error could have been avoided or corrected. *State v. Haudenschild*, 2024-Ohio-407, ¶ 15 (5th Dist.); *State v. Williams*, 51 Ohio St.2d 112, 117 (1977). Accordingly, a claim of error in such a situation is usually deemed to be waived absent plain error. See Crim.R. 52(B).[2]

{¶15} Under the plain-error doctrine, a reviewing court will intervene only under exceptional circumstances to prevent injustice. *Haudenschild*, ¶ 17, citing *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus ("Notice of plain error * * * is to be taken with the utmost caution, under exceptional circumstances and only to prevent a miscarriage of justice"). To prevail, Appellant must establish that an error occurred, that the error was obvious, and that there is a reasonable probability that but for the error, the outcome of the trial would have been different. *State v. Bailey*, 171 Ohio St.3d 486, 488 (2022).

{¶16} Here, Appellant's trial counsel admitted during opening arguments that Appellant had drug addiction issues. *Trial Tr.,* p. 123. Appellant's phone call with his stepfather stating he needed to detox is merely duplicative of defense counsel's own statements. It was no secret that Appellant has drug problems. Moreover, there is

[2] Appellant does not even argue plain error. Because he does not claim plain error on appeal, we need not consider it. *See, State v. Quarterman*, 2014-Ohio-4034, ¶ 17-20 (appellate court need not consider plain error where appellant fails to timely raise plain error claim); *Haudenschild*, ¶ 15. Rather, Appellant attempts to characterize the phone call as "other acts" evidence. Not only does the jail phone call not fit into the category of "other acts" evidence, and despite Appellant's failure to raise plain error on appeal, this Court will address plain error for the sake of clarity.

sufficient other evidence to support the jury's determination as to Appellant's guilt. Because Appellant cannot demonstrate that the outcome of his trial would be different had the phone call evidence not been admitted, there was no plain error in admitting the evidence. **Appellant's third assignment of error is overruled**.

Sufficiency and Manifest Weight of the Evidence

{¶17} In the second assignment of error, Appellant argues his convictions for aggravated possession and tampering with evidence are not supported by legally sufficient evidence and are against the manifest weight of the evidence. We disagree. The test for sufficiency of the evidence is "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89, 102 (1997), fn. 4; *State v. Worley,* 2021-Ohio-2207, ¶57. A sufficiency-of-the-evidence challenge asks whether the evidence is "legally sufficient to support the jury verdict as a matter of law." *State v. Lang*, 2011-Ohio-4215, ¶ 219.

{¶18} Weight of the evidence addresses the evidence's effect of inducing belief. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997); *State v. Williams*, 2003-Ohio-4396, ¶ 83. When a court of appeals reverses a judgment of a trial court as against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the fact finder's resolution of conflicting testimony. *State v. Jordan*, 2023-Ohio-3800; *Thompkins*, at 387; *Williams,* ¶ 60. The reviewing court must determine whether the jury clearly "lost its way and created such a manifest miscarriage of justice" that the conviction cannot

stand, and a new trial must be ordered. *Id.*, quoting *State v. Group*, 2002-Ohio-7247, ¶ 77 (citations omitted). Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *State v. Dotson*, 2017-Ohio-5565, ¶ 1 (5th Dist.).

{¶19} In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact. *Eastley v. Volkman,* 2012-Ohio-2179, ¶ 21; *In re Z.C.*, 2023-Ohio-4703, ¶ 14. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the [trier of fact] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland,* 10 Ohio St.3d 77, 80 (1984). In determining whether a witness is credible, the trier of fact is in the best position to consider inconsistencies in testimony, as well as the witnesses' demeanor and manner of testifying. *Dotson*, ¶ 50. Moreover, a defendant is not entitled to a reversal on manifest weight grounds simply because there was inconsistent evidence presented at trial. *Id.*; *State v. Raver*, 2003-Ohio-958, ¶ 21 (10th Dist.). If the evidence is susceptible to one or more interpretations, a reviewing court must interpret it in a manner consistent with the verdict. *Dotson*, ¶ 49.

{¶20} "Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency." *State v. McCrary,* 2011-Ohio-3161, ¶ 11 (10th Dist.), citing *State v. Braxton*, 2005-Ohio-2198, ¶ 15 (10th Dist.) (noting that "a determination that a conviction

is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.") (other citation omitted); *State v. Winbush,* 2017-Ohio-696, ¶ 58 (2d Dist.). As a result, a determination that a judgment is supported by the weight of the evidence will also be dispositive of sufficiency. *State v. Farra,* 2022-Ohio-1421, ¶ 50 (2d Dist.).

{¶21} As set forth above, Appellant was convicted of aggravated possession of drugs and tampering with evidence.[3] In addition to the officer's body camera footage, the evidence presented at trial included the testimony of eyewitness Lowell Meade, Shannon Jones, Corporal Shanes, and Officer Scott Hargrove. The testimony demonstrates that Corporal Shanes made the traffic stop due to Appellant's active warrant, and as he approached Appellant's vehicle, Appellant sped off and drove to a nearby parking lot.

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[3] Aggravated Possession of Drugs – R.C. 2925.11(A), 2925.11(C)(1)(b). The statute provides:

> (A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog; * * *
> (C) Whoever violates division (A) of this section is guilty of one of the following:
> (1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II * * * whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:
>
> (c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term a second degree felony mandatory prison term.

Tampering with Evidence – R.C. 2921.12(A)(1), 2921.12(B). The statute provides:

> (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
> (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation;
> * * *
> (B) Whoever violates this section is guilty of tampering with evidence, a felony of the third degree.

During that brief time, passenger Jones tossed the baggie of methamphetamine out the passenger side window.

{¶22} Jones testified that after Appellant drove off from Corporal Shanes, Appellant handed him the baggie of drugs and told him to discard it. Jones, who admitted to having drug addiction issues, complied with Appellant's request, stating he did not want to see anyone get in trouble. An eyewitness, Lowell Meade, testified that he saw Appellant drive off and saw the passenger toss the baggie out the window. Jones was forthcoming with Officer Hargrove at the scene about Appellant handing him the meth and telling him to toss it out. Jones testified that he pled guilty and was sentenced on his charges prior to anyone in the prosecutor's office talking to him about Appellant's case.

The prosecutor asked:

Q: As a result of your actions, were you charged with anything?

A: Yes.

Q: Were you charged with aggravated possession of drugs?

A: Yes.

Q: Were you charged with tampering with evidence?

A: Yes.

Q: How was your case resolved?

A: I pled - - I pled guilty and sentenced to STAR.

Q: Okay. Is it true that you pled guilty and [were] sentenced before me or anybody in my office even spoke to you?

A: Yeah.

Q: So you had been sentenced and sent to STAR before we even talked to you about maybe testifying in this case?

A: Yeah.

Q: Have you received any benefit or promises from me or anybody else with regard to - - in return for your testimony here today?

A: No.

Trial Tr., Vol. II, pp. 145-46.

{¶23} Defense counsel fully cross-examined Jones. Jones admitted that prior to him pleading guilty, he knew there was an eyewitness linking him to the crime. *Id.*, at pp. 147-48. Despite that acknowledgement, the jury could reasonably believe Jones' testimony that Appellant had the drugs and instructed Jones to discard the baggie out the window. Such credibility determinations are best suited for the finder of fact. Any inconsistencies in the witnesses' accounts or credibility determinations were for the jury to resolve as the factfinder. *Dotson*, ¶ 49. If evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict and not second guess the jury. *Id*.

{¶24} The jury also heard testimony regarding the jail call whereby Appellant tells his stepfather that his arrest was a "blessing in disguise" and gave him an opportunity to detox. As set forth above, there was no plain error in admitting evidence of the call, and it was properly considered by the jury. Upon our review of the entire record, we conclude Appellant's convictions for possessing drugs and tampering with evidence are supported by sufficient evidence and are not against the manifest weight of the evidence. The jury

did not clearly lose its way in resolving the evidence against Appellant. **Appellant's second assignment of error is overruled.**

Motion to Sever Aggravating Trafficking of Drugs Count

{¶25} Turning to the first assignment of error, Appellant argues the trial court should have severed the Aggravated Trafficking in Drugs count from the other two counts prior to the trial and its failure to do so unduly prejudiced the Appellant. Again, we disagree. Crim.R. 8(A) specifies that, "[t]wo or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged * * * are of the same or similar character * * *." The rule further permits the joinder of offenses that "are based on the same act or transaction or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan or are part of a course of criminal conduct."

{¶26} Generally, the law favors joinder and the avoidance of multiple trials. *State v. Garrett,* 2009-Ohio-5442, ¶ 39 (12th Dist.); *State v. Gordon*, 2018-Ohio-259, ¶ 18. Joint trials conserve judicial resources, lessen expenses, diminish inconvenience to witnesses, and reduce the likelihood of inconsistent results. *State v. Thomas*, 61 Ohio St.2d 223, 225 (1980); *accord Zafiro v. United States*, 506 U.S. 534, 537 (1993), quoting *Richardson v. Marsh*, 481 U.S. 200, 209 (1987) (stating that joint trials promote efficiency and serve the interests of justice and avoid the problem of inconsistent verdicts). However, if joinder prejudices a defendant, a trial court has discretion to sever the trials.

{¶27} Crim.R. 14 provides that, "[i]f it appears that a defendant * * * is prejudiced by a joinder of offenses * * * the court shall order an election or separate trial of counts * * * or provide such other relief as justice requires." Thus, "upon an affirmative

demonstration of prejudice," a defendant may move for severance. *Garrett*, ¶ 40, citing *State v. Wiles,* 59 Ohio St.3d 71, 76-77 (1991), citing *State v. Roberts*, 62 Ohio St.2d 170, 175 (1980).

{¶28} Appellate courts review a trial court's ruling on severance under an abuse of discretion standard. *State v. Ford*, 2019-Ohio-4539, ¶ 106; *State v. Hand*, 2006-Ohio-18, ¶ 166. An abuse of discretion implies that a court's attitude is unreasonable, arbitrary or unconscionable. *Id*. To establish that a trial court's refusal to sever constitutes an abuse of discretion, a defendant "must affirmatively demonstrate: (1) that his or her rights were prejudiced, (2) that at the time of the motion to sever, the defendant provided the trial court with sufficient information so that it could weigh the considerations favoring joinder against the defendant's right to a fair trial, and (3) that given the information provided to the court, it abused its discretion in refusing to separate the charges for trial." *State v. Schaim*, 65 Ohio St.3d 51, 59 (1992); *see also Gordon*, at ¶ 21; *Garrett*, ¶ 40. Joinder must be "so manifestly prejudicial" that the trial judge is required to exercise his or her discretion "in only one way - by severing the trial. * * * A defendant must show clear, manifest and undue prejudice and violation of a substantive right resulting from failure to sever." *State v. Schiebel*, 55 Ohio St.3d 71, 89 (1990), quoting *United States v. Castro*, 887 F.2d 988, 996 (9th Cir. 1989).

{¶29} Here, Appellant filed the motion to sever prior to trial and prior to any evidence being presented. Appellant clearly did not meet his burden to support severance until at least some evidence was presented at trial. As such, the trial court did not err in denying the motion to sever at the pretrial stage, and Appellant was not unduly prejudiced by the State in attempting to prosecute the charge. Moreover, Appellant

makes only conclusory assertions that he was prejudiced. He claims the jury may have used "other acts" evidence regarding aggravated drug trafficking – specifically the text messages and Kness' testimony - to infer a general criminal disposition. According to Appellant, because the State went into detail regarding the text messages, the jury likely relied on an inference, instead of actual evidence, to find him guilty of the two remaining offenses. Appellant further claims that because he successfully challenged the aggravated trafficking count and said count was dismissed, it is clear he did not receive a fair trial.

{¶30} While it is true that the trial court granted Appellant's Crim.R. 29 motion for the aggravated drug trafficking, the court exercised its due diligence thereafter and specifically ordered the jury to disregard the testimony of Samuel Kness in its entirety as well as all text messages on Appellant's cell phone and admitted into evidence. The Court stated:

> "So now that Count One is dismissed, you jurors must not consider any of the State's Exhibit 7 [text messages from Appellant's phone] or the testimony of Samuel Kness or any testimony or evidence that suggests that the defendant engaged in trafficking drugs. Our focus is no longer on trafficking. And, anything that you remember that you heard, that you saw, you must not consider in addressing the next two charges. Does anybody have any questions about that. So when you go in that jury room and somebody says, yeah, but what about - - and it's related to the d[r]ug trafficking, don't let the other jurors consider it anymore."
>
> *Trial Tr.*, Vol. III, p. 310.

{¶31} Absent evidence of juror misconduct, there is a presumption " ' that the jury has followed the instructions given to it by the trial court.' " *State v. Jones,* 2012-Ohio-5677, ¶ 194, quoting *State v. Murphy,* 65 Ohio St.3d 554, 584 (1992). The above instructions minimized the likelihood of any undue prejudice to Appellant. Indeed, properly admitted evidence establishing defendant's guilt included Jones' testimony, Meade's testimony, and Corporal Shanes' testimony as well as Axon body camera footage. Despite Appellant's repeated claims that it was all Jones' fault, the jury believed Jones' testimony that Appellant gave the baggie to Jones and told Jones to toss it out the window. Appellant's counsel thoroughly cross-examined Jones. Jones' testimony, in and of itself, is sufficient for a jury to find Appellant guilty of the possession and tampering counts. Thus, Appellant cannot establish a manifest and undue prejudice to him or any violation of a substantive right. **Appellant's first assignment of error is overruled**.

Post-Release Control

{¶32} In the fourth and final assignment of error, Appellant claims the trial court failed to properly impose post-release control. Pursuant to R.C. 2967.28, post-release control involves a period of supervision by the Adult Parole Authority after an offender's release from prison that includes one or more post-release control sanctions. *State v. Collins*, 2018-Ohio-4760, ¶ 15 (2d Dist.) "Post-release control is mandatory for some offenses and is imposed at the discretion of the Parole Board for others, depending on the nature and degree of the offense." *Id.*, citing R.C. 2967.28(B) and (C).

{¶33} R.C. 2929.19(B)(2)(d) and (e) requires the trial court to notify a defendant at sentencing that the defendant either will or may be placed on post-release control ("PRC") after release from prison and said PRC is supervised by the Adult Parole

Authority. Subsection (f) requires a trial court to advise the defendant at sentencing that, if he or she violates a condition of [PRC], the parole board may "impose a prison term, as part of the sentence, of up to one-half of the definite prison term originally imposed upon the offender as the offender's stated prison term * * *." *State v. Manzi*, 2023-Ohio-732, ¶ 11 (2d Dist.). In short, "[t]he trial court must advise the offender at the sentencing hearing of the term of supervision, whether [PRC] is discretionary or mandatory, and the consequences of violating [PRC]." *State v. Bates*, 2022-Ohio-475, ¶ 11; *State v. Daniels,* 2023-Ohio-2043, ¶ 15 (4th Dist.) *citing State v. Grimes,* 2017-Ohio-2927, ¶ 1.

{¶34} Here, the trial court stated, "I am reminding you about the up to two-year discretionary [PRC] period." *Sentencing Tr.*, p. 16. The Judgment Entry contains a section titled "PRC Notifications" and includes all the required notifications. However, a review of the sentencing hearing transcript indicates the trial court fell short of its obligations. Indeed, the sole brief statement above is insufficient to advise Appellant that (1) he would be supervised by the Adult Probation Authority and (2) the consequences for Appellant's failure to comply with any post-release conditions. The State concedes that the trial court failed to adequately advise Appellant. Although this Court is confident that the trial court is well-aware of its obligations, we must remand for the extremely limited purpose of properly advising Appellant regarding PRC. Accordingly, **we sustain Appellant's fourth assignment of error and remand to the trial court for proceedings consistent with this opinion**.

CONCLUSION

{¶35} For the reasons stated in our accompanying Opinion, the judgment of the Fairfield County Court of Common Pleas is Affirmed in Part, and Remanded in Part.

{¶36} Costs equally to the parties.

By: Montgomery, J.

Hoffman, P.J. and

Popham, J. concur.