**[Cite as *State v. Ford*, 2023-Ohio-2220.]**

| | | |
|---|---|---|
| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

| | |
|---|---|
| STATE OF OHIO<br><br>Appellee<br><br>v.<br><br>STANLEY O. FORD<br><br>Appellant | C.A. No. 30167<br><br><br><br>APPEAL FROM JUDGMENT<br>ENTERED IN THE<br>COURT OF COMMON PLEAS<br>COUNTY OF SUMMIT, OHIO<br>CASE No. CR 17 06 1953 |

DECISION AND JOURNAL ENTRY

Dated: June 30, 2023

---

SUTTON, Presiding Judge.

**{¶1}** Defendant-Appellant, Stanley Ford, appeals from the judgment of the Summit County Court of Common Pleas. For the following reasons, this Court affirms, in part, and reverses, in part, for the sole purpose of resentencing.

I.

**Relevant Background**

**{¶2}** This appeal arises as a result of three fires occurring within thirteen months of each other in the same Akron neighborhood. On April 18, 2016, a fire was intentionally started at a residence located at 719 Fultz Avenue, in Akron, Ohio. Two individuals were killed in that fire, and one individual escaped. On January 23, 2017, a vehicle was set on fire at 723 Russell Avenue, in Akron, Ohio. On May 15, 2017, a fire was intentionally started at a residence located at 693 Fultz Avenue, in Akron, Ohio. Seven individuals, including five children, and the family dog were killed in that fire. The three fires occurred at addresses in very close proximity to Mr. Ford's

residence located at 1370 Hillcrest Street, Akron, Ohio, and Mr. Ford's deceased mother's residence located at 1374 Hillcrest Street, Akron, Ohio.

**{¶3}** John Weber, an investigator and K-9 handler with the state fire marshal's office, investigated both residential fires. K-9 India, trained in accelerant or ignitable liquid detection, alerted to the presence of accelerant on the porches of both residences, and on the west side of the residence at 719 Fultz Avenue. During a search of Mr. Ford's two residences, K-9 India also alerted to a coat, black sweatpants, and containers labeled "gasoline" and "charcoal lighter fluid." Brian Peterman, an investigator with the state fire marshal's office, indicated both fires originated on the front porches. Specifically, the 719 Fultz Avenue fire originated on the "front porch of the house, on the west side."

**{¶4}** Video surveillance footage of the 719 Fultz Avenue fire showed an individual carrying a container igniting the fire by the front porch on the west side of the residence. Further, video surveillance footage of the 693 Fultz Avenue fire showed an individual quickly moving between 1370 Hillcrest Street, 1374 Hillcrest Street, and 693 Fultz Avenue at the time of the fire. This video footage also showed a "flash" when the 693 Fultz Avenue fire was ignited. Alarm.com records showed the security alarm at 1374 Hillcrest Street, Mr. Ford's deceased mother's residence, was disarmed using Mr. Ford's assigned code prior to the start of both fires. Several individuals in the neighborhood corroborated Mr. Ford had ongoing issues with the individuals living at 719 Fultz Avenue and 693 Fultz Avenue. One individual also indicated Mr. Ford believed God placed him in the neighborhood as its guardian angel.

**{¶5}** Mr. Ford was indicted on twenty-two counts of Aggravated Murder, in violation of R.C. 2903.01(A)/(B)/(C), special felonies with Death Penalty Specifications and Repeat Violent Offender Specifications, two counts of Aggravated Arson, in violation of R.C. 2909.02(A)(1),

felonies of the first degree, with Repeat Violent Offender Specifications, one count of Cruelty Against Companion Animal, in violation of R.C. 959.131(C), a felony of the fifth degree, with a Repeat Violent Offender Specification, two counts of Attempted Aggravated Murder, in violation of R.C. 2903.01, felonies of the first degree, with Repeat Violent Offender Specifications, one count of Arson, in violation of R.C. 2909.03 a misdemeanor of the first degree, and one count of Aggravated Menacing, in violation of R.C. 2903.21, a misdemeanor of the first degree.

**{¶6}** Subsequent to a jury trial, Mr. Ford was convicted of twenty-two counts of Aggravated Murder, two counts of Attempted Aggravated Murder, and two counts of Aggravated Arson. The jury acquitted Mr. Ford of the charges of Cruelty Against Companion Animal, Arson, and Aggravated Menacing. Additionally, the jury reconvened for the sentencing phase of trial and returned verdicts finding the aggravating circumstances did not outweigh the mitigating factors beyond a reasonable doubt as to the death penalty specifications. The jury recommended life imprisonment without the possibility of parole.

**{¶7}** After the trial court conducted an allied offenses of similar import analysis and merged certain counts, the State elected to proceed to sentencing on nine counts of Aggravated Murder and one count of Attempted Aggravated Murder. The trial court sentenced Mr. Ford to nine consecutive life sentences without the possibility of parole, plus twenty-one years. The trial court further sentenced Mr. Ford to solitary confinement on the following dates for the duration of his life: January 10th, January 15th, April 18th, May 17th, December 8th and December 23rd.

**{¶8}** Mr. Ford now appeals raising six assignments of error for our review.

II.

**ASSIGNMENT OF ERROR I**

**THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND MR. FORD COMPETENT TO STAND TRIAL BASED ON EVIDENCE THAT WAS NOT RELIABLE AND CREDIBLE.**

**{¶9}** In his first assignment of error, Mr. Ford argues the trial court abused its discretion in finding Mr. Ford competent to stand trial based upon evidence that was not reliable and credible. Specifically, Mr. Ford challenges the report and opinion issued by Twin Valley Behavioral Health finding him competent to stand trial.

**{¶10}** Competency determinations are reviewed for an abuse of discretion. *See State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, ¶ 53. As this Court has previously stated:

> [c]riminal defendants are presumed competent to stand trial. R.C. 2945.37(G). "[T]he burden is on the defendant to prove by a preponderance of the evidence that he is not competent." [*Were* at ¶ 45]. The question is "'whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him.'" *State v. Berry*, 72 Ohio St.3d 354, 359 (1995), quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960). "One who lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not stand trial." *State v. Smith*, 9th Dist. Summit No. 27389, 2015-Ohio-2842, ¶ 9, citing *State v. Skatzes*, 104 Ohio St.3d 195, 2004-Ohio-6391, ¶ 155. *Accord* R.C. 2945.401(J)(2)(a).
>
> "A criminal defendant's competency to stand trial * * * is a question of fact." *State v. Roberts*, 137 Ohio St.3d 230, 2013-Ohio-4580, ¶ 92. Deference, therefore, generally ought to be afforded to a trial court's competency determination, as "factual determinations are best left to those who see and hear what goes on in the courtroom." *State v. Cowans*, 87 Ohio St.3d 68, 84 (1999). *Accord State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, ¶ 59 ("As with other witnesses, the trial judge heard all of the expert testimony, and it was [her] job to judge their credibility and weigh all the evidence in making [her] findings."). A trial court's competency findings "will not be disturbed when there is some reliable and credible evidence supporting those findings." *Were* at ¶ 46.

*State v. Stutzman*, 9th Dist. Wayne No. 18AP0038, 2019-Ohio-1695, ¶ 12-13.

**{¶11}** Here, after becoming concerned regarding Mr. Ford's competency to stand trial because of his diagnosis of vascular dementia, the trial court ordered the Psycho-Diagnostic Clinic, pursuant to R.C. 2945.371(G)(3)[1], to examine Mr. Ford in order to determine whether he "was capable of understanding the nature and object of the proceedings against him and of assisting in his defense." Dr. Arcangela S. Wood examined Mr. Ford on two occasions at the Summit County Jail for approximately five and one-half hours. Based upon her examinations of Mr. Ford, as well as her review of other documentation relating to the present case and Mr. Ford's medical history, Dr. Wood opined as follows:

> With regard to Mr. Ford understanding the nature and objective of the legal proceedings against him, he currently understands his own position in these court proceedings as being the accused and having pending criminal charges. Mr. Ford understands the gravity of the criminal charges against him and possible penalties if found guilty. He also has an understanding of his legal rights such as his right to a trial, right to testify, and right to not self-incriminate. Mr. Ford understands the pleas, possible outcomes, and the concept of a plea arrangement. In addition, he knows the roles of court participants and adversarial nature of the courtroom; however, Mr. Ford has expressed paranoia that his attorneys and the judge are involved in a conspiracy with the prosecutor against him. Although he currently acknowledges that he does not have proof of his attorneys conspiring against him, the extent and conviction that he believes the judge is conspiring against him remains unclear. Furthermore, it is unclear if his ideas [] or possible delusions interfere with his ability to apply his knowledge in a rational way to his own situation.
>
> With regard to Mr. Ford being capable of assisting in his defense, he has vacillated between paranoia that his attorneys are conspiring against him and not having proof that they are conspiring. Currently, he reports being able to work with them. Mr. Ford does perseverate over what was presented to the Grand Jury, and that he should be released from the Summit County Jail without having to proceed further with the criminal case. At times, Mr. Ford is so focused on these issues that he has difficulty remaining on topic and responding relevantly to questions without discussing these topics, which may interfere with his ability to testify on his own behalf in a relevant manner, and it may interfere with his ability to realistically and rationally challenge prosecution witnesses. Also, he believes that evidence has been fabricated against him.

[1] R.C. 2945.371(G)(3) is renumbered as R.C. 2945.371(H)(3) in the version of the statute effective August 3, 2021.

> At this point in time, it is difficult to ascertain whether Mr. Ford's beliefs and behaviors are based solely on delusions. It is also difficult to ascertain the impact this has on his decision making about his case. Therefore, I am unable to render an opinion as to [Mr. Ford's] ability to understand the nature and objective of the legal proceedings against him and assist in his defense.

Dr. Wood recommended Mr. Ford be referred to Twin Valley Behavioral Healthcare- Timothy B. Moritz Forensic Unit, a maximum security hospital, for a 20-day inpatient evaluation to determine whether or not Mr. Ford is "capable of understanding the proceedings against him and whether or not he is able to assist in his own defense." Further, Dr. Wood explained an inpatient evaluation "would allow for 24-hour observation of [Mr. Ford's] behavior and a more in-depth assessment of his current mental condition and competence to stand trial."

**{¶12}** Based upon Dr. Wood's recommendation, the trial court ordered Mr. Ford transported to Twin Valley Behavioral Healthcare upon a bed opening up for a 20-day inpatient evaluation. Mr. Ford was admitted for inpatient evaluation from August 23, 2019, through September 16, 2019. During this time-period, Dr. Kevin Edwards, a forensic psychologist, completed a competency evaluation of Mr. Ford. In so doing, Dr. Edwards submitted a written report, dated September 13, 2019, to the trial court, State, and defense counsel wherein he opined, pursuant to R.C. 2945.371(G)(3), Mr. Ford is competent to stand trial in that he currently is capable of understanding the nature and objective of the proceedings against him and is able to assist his counsel in his defense. In his report, Dr. Edwards indicated his interview with Mr. Ford lasted approximately two-hours and fifteen minutes. Dr. Edwards described Mr. Ford as:

* * *

> cooperative to participate in the examination in that he agreed to meet, listened to informed consent, and responded to all tasks. [Mr. Ford] was able to provide personal history. He did not exhibit apparent difficulty with expressive or receptive language functions. His speech had no pressure or rapidity. He did not present delusional material.

* * *

Additionally, Dr. Edwards stated:

> It is my opinion that Mr. Ford does not meet criteria for a serious mental disorder nor intellectual disability. I indeed had to provide some cues and explanations in a few competency areas, and Mr. Ford showed an adequate capacity to learn. Mr. Ford evidenced no deficits in attention meaning he likely will also be able to follow court proceedings as well as attorney and/or court instructions. His memory for personal history and recent and remote events was quite good, with him even giving exact dates for many. Thus, he is likely to remember discovery content, witness testimony, and instructions. He was pleasant and cooperative and at the same time had a clear understanding of the impact of untoward behavior. He has no significant functional cognitive deficits or psychological symptoms that would impede his ability to develop a rational trial strategy and/or reasonable plea agreement in concert with counsel. That lack of cognitive deficits and psychological symptoms also bodes well for his ability to withstand the stress of court proceedings, and Mr. Ford denied that he is concerned about being overwhelmed. There is evidence in the record of frontal lobe volume loss and he has been diagnosed with mild neurocognitive disorder. [Mr. Ford] said he was advised he had suffered several TIAs (small-vessel hemorrhagic events), but that he was unaware they occurred. [Mr. Ford] also said he has not noted decreased functional skills such as reduced concentration, word finding problems, or lessened recall and none were evident in the record or on current examination.
>
> On the other hand, Mr. Ford expressed some concerns about his attorneys. He attributed some nefarious practices to law enforcement. And, he perhaps was too adamant about testifying to prove his innocence. Frankly, this is not beyond the pale in my experience with evaluating defendants. Also, there is no evidence available to me that [Mr. Ford] holds these beliefs to the magnitude necessary to qualify as delusions as was the concern with the prior examination. No historical records show or suspect the presence of psychosis such as delusions. Current examinations at [Twin Valley Behavioral Health Care] have not found psychosis. More, Mr. Ford told me he could change his opinion if presented with contrary evidence, which is antithetical to these being delusional beliefs.

**{¶13}** Upon reviewing Dr. Edwards' report, Mr. Ford moved the trial court for a second opinion on the issue of competency. The trial court granted Mr. Ford's motion and ordered Dr. James Karpawich to complete the testing. The record shows, however, Mr. Ford did not submit Dr. Karpawich's report into evidence, nor was Dr. Karpawich called to testify at the December 19,

2019 competency hearing. On January 3, 2020, Mr. Ford withdrew his motion for a second opinion on the issue of competency.

**{¶14}** Dr. Edwards testified at the December 19, 2019 competency hearing[2], and indicated, in seventeen years of private practice, he had completed approximately 1,400 competency evaluations. In completing Mr. Ford's evaluation, Dr. Edwards reviewed Dr. Wood's report as well as staff notes from the activity therapy, social work, psychology, and psychiatry departments at Twin Valley Behavioral Healthcare. Additionally, Dr. Edwards reviewed documentation from the Summit County Court of Common Pleas and the Summit County Jail. During his time with Mr. Ford, Dr. Edwards conducted a mental status examination, which he found unremarkable, and assessed Mr. Ford's capacity to understand the nature and objectives of the legal proceedings and his capacity to assist in his defense.

**{¶15}** On cross-examination, Dr. Edwards explained his reasoning as to why he did not believe Mr. Ford was delusional, stating:

* * *

> [W]e did speak at some length about his attorneys, law enforcement practices, who all's talking to whom and whether there are any back-door deals being made and such.
>
> Delusions are fixed false beliefs held in the face of evidence to the contrary. That's a pretty strong belief system. And I did not find that he held that to that degree. Concerns? Yes. Problems? Perhaps. Per his attorneys. But it is not delusional. It does not reach that level of severity.

* * *

> It's something I've experienced many times in talking with defendants through the years; particularly, the angst about having a public defender or something like that.
>
> So I did not find it to be outside the pale to reach anything of a delusional nature.

[2] The parties had previously stipulated to the contents of Dr. Wood's report and further agreed if she testified, her testimony would be consistent with the contents of her report.

* * *

> For example, when he talked about wondering why you guys all talk so much, you were plotting, not plotting, but you were going against him, didn't have his best interests at heart by doing so.
>
> I said, "Well, is it possible that there's strategy involved? Is it possible your attorneys are getting evidence? Is it possible your attorneys are, you know, making a plea deal," you know.
>
> "Yeah, but I don't think so."
>
> He could consider it; delusion would not consider that.

* * *

> A common response would be, "You can believe that but I won't."

* * *

Dr. Edwards admitted on cross-examination that he did not review any of the "source material" Dr. Wood included with her report because he was not personally provided with those records by Twin Valley Behavioral Healthcare. However, Dr. Edwards explained the historical records would not change his opinion to a reasonable degree of psychological certainty regarding Mr. Ford's competency because competency is a snapshot in time. Dr. Edwards indicated: "competency is about what's going on now." Further, he remarked, "Mr. Ford or anyone, could have been frankly psychotic for 20 years, received treatment for the first time and be competent." Moreover, Dr. Edwards testified Mr. Ford was:

> being observed 24-7 and if a person has a mental illness it is going to show within 20 days. It is going to show within two hours. And the records can help me to understand that, they can show that it's consistent. They can show that it's contrary. They can tell me where to look to find it. But I'm very confident that we are going to find it within that 20-day window.

**{¶16}** In finding Mr. Ford competent to stand trial because he does not suffer from any mental disease or defect that would impair his ability to understand the nature and objectives of

the proceedings against him or assist in his defense, the trial court indicated it relied upon Dr. Wood's and Dr. Edwards' reports, Dr. Edwards' testimony, the trial court's own interactions with Mr. Ford over the course of 24-months, and the presumption, pursuant to R.C. 2945.37(G), that Mr. Ford is competent to stand trial. Specifically, the trial court highlighted Dr. Wood's finding that Mr. Ford understands:

> 1) the nature and objective of the legal proceedings against him; 2) he is accused of committing the criminal charges filed against him; 3) the gravity of those charges; 4) the possible penalties he faces if he is found guilty; 5) his legal rights[;] 6) the concept of plea agreements; 7) the roles of court participants; and 8) the adversarial nature of courtroom proceedings.

Moreover, the trial court indicated that Dr. Edwards, in following up on the concerns raised by Dr. Wood, addressed whether Mr. Ford suffered from a delusional disorder. The trial court stated:

> Dr. Edwards indicated, as to [Mr. Ford's] concerns regarding his attorneys, the prosecuting attorneys and the [c]ourt, that while [Mr. Ford] did not agree with the alternative scenarios provided by Dr. Edwards, [Mr. Ford] was willing to consider them, "which almost by itself rules out a delusional disorder." According to Dr. Edwards, [Mr. Ford] would take the advice of his attorneys regarding whether or not he would testify on his own behalf. [Mr. Ford] acknowledged to Dr. Edwards his belief that his attorneys are good attorneys and know the law but sometimes he questions their motives as to his best interest. [Mr. Ford] reported that he would tell his attorneys everything he knows about his case to help find evidence and witnesses.

**{¶17}** Having reviewed the record, this Court concludes that "some reliable and credible evidence" supports the trial court's competency findings. *Were* at ¶ 46. Specifically, both Dr. Wood and Dr. Edwards determined Mr. Ford understood the nature and objective of the legal proceedings against him. Then, based upon Dr. Wood's concerns regarding whether Mr. Ford suffered from a delusional disorder, Mr. Ford was ordered to be evaluated, on an inpatient basis, for 20-days. Dr. Edwards explained Mr. Ford was monitored 24-7, and during that 20-day time-period, he did not demonstrate symptoms of a delusional disorder or significant symptoms of mental illness or cognitive disorder. Dr. Edwards based this opinion upon his own examination of

Mr. Ford, as well as the staff notes from the activity therapy, social work, psychology, and psychiatry departments at Twin Valley Behavioral Healthcare. Even though Mr. Ford did not always agree with his counsels' motives, Dr. Edwards opined Mr. Ford was not delusional because he was willing to consider other alternative scenarios. According to Dr. Edwards, a person suffering from delusional disorder would be unwilling to do so. As such, based upon his own observations, Dr. Edwards concluded Mr. Ford could consult with counsel and assist in his own defense. Further, the fact Dr. Edwards did not review Dr. Wood's source materials, and some minor inconsistencies existed between his and Dr. Wood's report regarding Mr. Ford's ability to recall details about his childhood and a possible minimization of his past drug use, does not invalidate Dr. Edwards' opinion. As previously indicated, a competency determination is based upon a person's current condition and abilities.

**{¶18}** Accordingly, Mr. Ford's first assignment of error is overruled.

## ASSIGNMENT OF ERROR II

**THE TRIAL COURT ERRED WHEN IT ALLOWED A SINGLE TRIAL TO BE HELD FOR CHARGES RELATED TO THREE SEPARATE ARSON INCIDENTS THAT OCCURRED OVER A PERIOD OF 13 MONTHS.**

**{¶19}** In his second assignment of error, Mr. Ford argues the trial court erred when it allowed a single trial to be held for charges related to three separate incidents of arson occurring over a thirteen-month period. Specifically, Mr. Ford contends he was prejudiced due to complicated circumstantial evidence introduced to prove each incident of arson. Further, Mr. Ford argues the compounding effect of circumstantial evidence had a prejudicial effect upon his trial.

**{¶20}** "It is well-settled that the law favors joinder." *State v. Merriweather*, 9th Dist. Lorain No. 97CA006693, 1998 WL 239773, *3 (May 6, 1998). "This is because joint trials 'conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays

in bringing those accused of crime to trial.'" *State v. Gordon*, 152 Ohio St.3d 528, 2018-Ohio-259, ¶ 18, quoting *Bruton v. United States*, 391 U.S. 123, 134 (1968). Crim.R. 14 governs the joinder of offenses, whether in a single or separate indictments, for trial. *State v. Hatfield*, 9th Dist. Summit No. 23716, 2008-Ohio-2431, ¶ 14.

**{¶21}** "[A] Crim.R. 14 analysis examines any prejudice resulting from [ ] joinder in light of the evidence introduced at trial." *State v. Ecker*, 9th Dist. Summit No. 28431, 2018-Ohio-940, ¶ 11, quoting *State v. Greathouse*, 9th Dist. Summit No. 27782, 2017-Ohio-6870, ¶ 19. A defendant claiming prejudice:

> must affirmatively demonstrate (1) that his rights were prejudiced, (2) that at the time of the motion to sever he provided the trial court with sufficient information so that it could weigh the considerations favoring joinder against [his] 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).

**{¶22}** Meanwhile, a defendant's "claim of prejudice may be rebutted by the prosecution in one of two manners." *State v. Shipley*, 9th Dist. Lorain No. 03CA008275, 2004-Ohio-434, ¶ 75. *Accord Schaim* at 59. First, the State "can overcome a defendant's claim [of prejudice] * * * by showing that it could have introduced evidence of the joined offenses as 'other acts' evidence under [Evid.R.] 404(B)." *State v. Kolvek*, 9th Dist. Summit Nos. 28141, 28142, 28143, 28144, 28145, 2017-Ohio-9137, ¶ 18. Alternatively, it can show that "the evidence of each crime [is] simple and direct, such that 'the jury is believed capable of segregating the proof on each charge.'" *Id*., quoting *State v. Roberts*, 62 Ohio St.2d 170, 175 (1980). "[W]hen simple and direct evidence exists, an accused is not prejudiced by joinder regardless of the nonadmissibility of evidence * * * under Evid.R. 404(B)." *State v. Lott*, 51 Ohio St.3d 160, 163 (1990).

**{¶23}** Mr. Ford moved the trial court to sever the three incidents and permit separate trials before different juries to avoid unfair prejudice. In so doing, Mr. Ford introduced a number of studies regarding, *inter alia*, "the impact joined charges had on overall perception of the defendant," whether more charges equated to a lower standard of proof to find guilt, and confusion of the jury regarding the evidence in each incident. In his supplemental motion, Mr. Ford also argued:

> [i]n this case, there are no eyewitnesses, there are no victims to testify about a direct encounter with [Mr. Ford], and there is no corroborating evidence or testimony to support the testimony of eyewitness and/or victim testimony. Looking at each of the events in this case separately, each has complicated evidence which is overwhelmingly circumstantial in nature.

**{¶24}** In response, the State claimed it could negate any claims of alleged prejudice because evidence relating to each of the three incidents would be admissible in separate trials, pursuant to Evid.R. 404(B), as other acts evidence, and the evidence relating to each incident is simple and direct.

**{¶25}** The trial court, in denying Mr. Ford's Crim.R. 14 motion, reasoned:

> Having considered [Mr. Ford's] [m]otion, the briefs in support and in opposition, the arguments of counsel, and the applicable law, the [c]ourt finds that [Mr. Ford] has not produced any evidence tending to show that joinder of all the counts in the indictment for one trial could cause him prejudice so great as to deny his right to a fair trial. ("In order to prevail on a motion for severance, a defendant must show compelling, specific and actual prejudice from a court's refusal to grant the motion to sever.["] *See* [*United States v. Sherlin*, 67 F.3d 1208, 1205 (6th Cir.1995)]. [Mr. Ford] has not met this burden. [Mr. Ford] alludes to the cumulative effect of the evidence on the jurors, and concludes that the jury may have found him 'guilty of one crime and then improperly [found] him guilty of another crime merely because of his criminal disposition.' But he provides no evidence to support this assertion, and an unproven assertion is not compelling evidence of actual prejudice." [*United States v. Saadey*, 393 F.3d 669, 678-679 (6th Cir.2005)]. Simply put, this [c]ourt does not find a serious risk that a joint trial of the three arsons would prevent the jury from making a reliable judgment about guilt or innocence.

Further, the trial court indicated that, even if Mr. Ford had established prejudice by the joinder of the charged offenses, the State rebutted any claim of prejudice because (1) "the evidence regarding each incident is separate, direct and uncomplicated, as the evidence it intends to produce relates to different victims on different dates at different locations and can reasonably be separated as to each offense" and (2) "the evidence regarding all three incidents would be admissible as to each other under Evid.R. 404(B) at each trial."

**{¶26}** Prior to deliberations, the trial court charged the jury regarding the evidence presented for each of the three incidents, stating:

> You have now heard closing arguments. The charges set forth in each count in the indictment constitute a separate and distinct matter. *You must consider each count and the evidence applicable to each count separately and you must state your findings as to each count uninfluenced by your verdict as to any other count.*
>
> [Mr. Ford] may be found guilty or not guilty of any one or all of the offenses charged.
>
> Evidence was received about the commission of three separate fires and the charges associated with each fire with which [Mr. Ford] is charged in this trial.
>
> That evidence was received as to each specific offense or offenses charged relating to each separate fire. The evidence was not received, and you may not consider it, to prove the character of [Mr. Ford] in order to show that he acted in accordance with that character.
>
> If you find that the evidence of one of the fires is true and [Mr. Ford] committed that fire and the offenses associated with that fire, you may consider that evidence as it relates to the remaining fires only for the purpose of determining whether such evidence proves [Mr. Ford's] motive, plan, and/or identity. We call this other acts evidence.

(Emphasis added.) As this Court has repeatedly stated, "[i]t is presumed that the jury will follow the court's instructions." *State v. Spaulding*, 9th Dist. Summit No. 28526, 2018-Ohio-3663, ¶ 86.

**{¶27}** Here, the circumstances surrounding the three incidents of arson, including the dates, locations, and victims, were distinct and easy to keep separate. Additionally, although

circumstantial, the evidence against Mr. Ford as to the two residential fires was compelling. Specifically, the State put on evidence in both residential fires of video surveillance footage, implicating Mr. Ford, near and around the start of the fires. The State also produced witnesses who testified regarding Mr. Ford's contentious relationships with victims in both residential fires. Further, Alarm.com documentation showed the use of Mr. Ford's code to disarm the 1374 Hillcrest Street alarm near the start of both residential fires. The K-9 working with the state fire marshal alerted to the scent of accelerant on certain items in Mr. Ford's residences. Moreover, even though some overlap existed, the State methodically put on individual witnesses to testify about each arson in an orderly fashion which allowed the jury to segregate information about each arson and did not conflate the proof against Mr. Ford. *See State v. Lewis*, 6th Dist. Lucas Nos. L-09-1224, L-09-1225, 2010-Ohio-4202, ¶ 33 (noting that Ohio courts find no error when "evidence is presented in an orderly fashion as to the separate offenses or victims without significant overlap or conflation of proof."). Also, "[t]he fact that the jury heard cumulative evidence against [Mr. Ford] does not by itself demonstrate prejudice, as that fact is true in every trial where indictments or defendants are jointly tried." *State v. Samuels*, 9th Dist. Summit Nos. 25982, 25983, 25984, 2012-Ohio-5401, ¶ 13.

**{¶28}** Ultimately, even though the trial court denied Mr. Ford's Crim.R. 14 motion, the jury acquitted Mr. Ford of the charges associated with the vehicle arson, and the charge relating to the death of the family dog in the 693 Fultz Avenue arson. Thus, Mr. Ford has not demonstrated compelling, specific and actual prejudice. *See Sherlin*, 67 F.3d at 1215. Moreover, even if Mr. Ford had demonstrated prejudice from the joinder, which he has not, the State rebutted that presumption by showing that the evidence of each crime [is] simple and direct, such that 'the jury

is believed capable of segregating the proof on each charge.'" *Kolvek*, 2017-Ohio-9137, at ¶ 18, quoting *Roberts*, 62 Ohio St.2d at 175.

**{¶29}** Therefore, based upon this record, we cannot say the trial court abused its discretion in allowing the three incidents of arson to be tried together before one jury.

**{¶30}** Accordingly, Mr. Ford's second assignment of error is overruled.

## ASSIGNMENT OF ERROR III

**PROSECUTORIAL MISCONDUCT DENIED MR. FORD A FAIR TRIAL AND DUE PROCESS OF LAW.**

**{¶31}** In his third assignment of error, Mr. Ford argues he was denied a fair trial and due process of law based upon alleged prosecutorial misconduct in the State's closing argument. Specifically, Mr. Ford argues the State "clearly encouraged the jurors to view each of the three arson incidents cumulatively." Mr. Ford, in making this argument, points to the following comments:

> The key question in this case is whether you believe beyond a reasonable doubt that this man, Stanley Ford, is the individual in those videos starting those fires at 719 Fultz and 693 Fultz.
>
> As Detective Looney testified to, in that second fire the key is who is the man running down the street. And it was the defendant in this case, Stanley Ford.
>
> ***
>
> I think you saw after the May 15th, 2017 fire when you heard that evidence, that this case came together like the pieces of a puzzle. Especially after that second [house] fire. And especially after listening to [Mr. Ford's] statements in this case.
>
> Is it possible that an unknown killer or killers decided to kill [L.L.] and [G.H.] along with the Boggs and Huggins family on the same street months apart? Sure.
>
> Is it possible that the unknown killer or killers both decided to use arson as their means of committing the crimes? Wow. What a coincidence.

Importantly, there is no dispute that Mr. Ford failed to object to these statements at trial, which limits our review to plain error.

**{¶32}** "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). The plain error doctrine requires there to be: (1) a deviation from a legal rule; (2) that is an obvious defect in the trial; and (3) that affects the appellant's substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). Under the third element, an appellant must show that the error affected the outcome of his trial. *Id*. "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

**{¶33}** When prosecutorial misconduct is alleged to have occurred in the context of closing argument, this Court must consider whether the remarks at issue were improper and, if they were, whether the defendant's substantial rights were prejudicially affected. *State v. Kirkland*, 160 Ohio St.3d 389, 2020-Ohio-4079, ¶ 115. The test for determining whether prosecutorial misconduct has occurred is "whether the conduct complained of deprived the defendant of a fair trial." *State v. Fears*, 86 Ohio St.3d 329, 332. It is this consideration-rather than the culpability of the prosecutor-that forms the touchstone of the analysis. *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, ¶ 155, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982). With respect to determining whether a defendant was deprived of a fair trial, this Court must consider "the effect the misconduct had on the jury in the context of the entire trial." *State v. Keenan*, 66 Ohio St.3d 402, 410 (1993). When the alleged misconduct takes the form of remarks made during closing argument, that argument must therefore be viewed in its entirety to determine whether prejudice resulted. *Id*.

**{¶34}** Here, Mr. Ford only addresses a fragment of the State's closing argument, which, when viewed in the proper context, was not improper. First, the State encouraged the jury to "follow the evidence before making your decision. And to consider everything, whether we presented it [] or if [Mr. Ford] did." Further, when addressing the possible scenarios regarding an "unknown killer or killers" the State was explaining the concept of reasonable doubt and the difference between "possible" and "reasonable." As previously stated, the trial court instructed the jury as follows: "[y]ou must consider each count and the evidence applicable to each count separately and you must state your findings as to each count uninfluenced by your verdict as to any other count." The record, here, supports the jury in fact followed the trial court's instruction because Mr. Ford was acquitted on the charges relating to the vehicle fire and the family dog. Therefore, based upon this record, we cannot say the State's remarks in its closing argument negatively affected the outcome of Mr. Ford's trial, or that this is an exceptional circumstance where plain error should be noticed to prevent a manifest miscarriage of justice.

**{¶35}** Accordingly, Mr. Ford's third assignment of error is overruled.

**ASSIGNMENT OF ERROR IV**

**THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ALLOWED A STATE'S WITNESS-NEITHER A LAY WITNESS AS TO ANY RELEVANT FACTS NOR AN EXPERT WITNESS-TO TESTIFY REGARDING HIS INVESTIGATIVE WORK PRODUCT, IN THE FORM OF NARRATIVE ADOBE PDF SLIDESHOWS AND HIGHLY SELECTIVE TIMELINES, WHICH WORK PRODUCT WAS ULTIMATELY ADMITTED INTO EVIDENCE AS STATE'S EXHIBITS.**

**{¶36}** In his fourth assignment of error, Mr. Ford argues the trial court erred in allowing Bradley Barkhurst, a forensic specialist supervisor with the Ohio State Fire Marshal's Office, to testify regarding exhibits he created relating to the fires at 719 Fultz Avenue and 693 Fultz Avenue. Further, Mr. Ford argues the trial court erred in admitting the related exhibits into evidence. The

State, however, contends Mr. Ford mischaracterized the summary timelines created by Mr. Barkhurst as substantive evidence instead of demonstrative evidence. Mr. Barkhurst's summary timelines contained source materials from Alarm.com, Google Earth, and the 911 calls relating to both residential fires. Importantly, these individual source materials were admitted separately into evidence through the authentication and testimony of other witnesses.

**{¶37}** "Demonstrative evidence is admissible if it satisfies the general standard of relevance set forth in Evid.R. 401 and if it is substantially similar to the object or occurrence that it is intended to represent." *State v. Jones*, 135 Ohio St.3d 10, 2012-Ohio-5677, ¶ 82, citing *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶ 90; *State v. Palmer*, 80 Ohio St.3d 543, 566 (1997). Evid.R. 401 states: "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. "The admission of demonstrative evidence is subject to Evid.R. 403." *Jones* at ¶ 82. Evid.R. 403 states:

> A) Exclusion Mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.
>
> (B) Exclusion Discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

**{¶38}** A trial court's ruling on the admission of demonstrative evidence is reviewed under the abuse-of-discretion standard. *State v. Herring*, 94 Ohio St.3d 246, 255 (2002).

**{¶39}** Here, the record reveals Mr. Ford originally objected to Mr. Barkhurst's testimony based upon hearsay regarding the Alarm.com documentation. The State, however, contended although Mr. Barkhurst would not attest to the truth of the documents themselves, Mr. Barkhurst would indicate he used these documents to create the summary timelines. Further, the State argued

the Alarm.com documents were admissible under the business records exception to the hearsay rule. The trial court overruled Mr. Ford's objection on the basis of hearsay and allowed Mr. Barkhurst to testify.

**{¶40}** Mr. Ford then objected to the admission of the summary timelines into evidence stating, "[w]e object entirely to Exhibits 80, 81, 82, 83, 84, 85, 86, and 87.[3] Those are the timelines that Mr. Barkhurst testified to." Mr. Ford also objected to Exhibits 121-126.[4] In response, the State argued the summary timelines along with the narrative and video presentations are demonstrative in nature, prepared by Mr. Barkhurst to aid the jury in understanding the different video, photo, and time-frame evidence relevant to the fires. In response, Mr. Ford's counsel then specifically addressed Exhibit 85, which indicated "[a]larm panel disarmed by Stanley Ford." The trial court overruled Mr. Ford's objection and admitted the summary timelines into evidence.

**{¶41}** Based upon this record, we cannot say the trial court abused its discretion in allowing Mr. Barkhurst to testify, and in admitting into evidence the summary timelines, along with the narrative and video presentations. The individual source materials that formed the basis for the summary timelines, narrative and video presentations, had all been separately admitted into evidence. The information from Alarm.com, Google Earth and the police and fire departments was relevant, pursuant to Evid.R. 401, to this case. Other than the notation "[a]larm panel disarmed by Stanley Ford," which was also indicated on State's Exhibit 40, the Alarm.com documents, the summary timelines and narrative/video presentations did not include any specific implications against Mr. Ford. As such, these demonstrative aids were not unduly prejudicial, pursuant to Evid.R. 403, to Mr. Ford or confusing/misleading to the jury.

---

[3] Exhibits 80-87 relate to the fire at 719 Fultz Avenue on April 18, 2016.

[4] Exhibits 121-126 relate to the fire at 693 Fultz Avenue on May 15, 2017.

**{¶42}** Regarding the notation "[a]larm panel disarmed by Stanley Ford," prior to Mr. Barkhurst's testimony, the trial court addressed the jury, stating:

* * *

> Ladies and gentlemen, first, before we start there's a couple of things I want to explain.
>
> Mr. Barkhurst's observations and the things he may label on his screens or on the slides you're about to see are his observations.
>
> As the trier of fact, you will decide the sole evidence in this case.
>
> So he may point things out that he and the State of Ohio believe may be relevant or important to you, but you will ultimately decide what's on that video and what it is.
>
> [H]e may characterize it as something, but you are ultimately the deciders of what that video or []evidence or those slides show. So his observations are strictly his observations. And I want you to understand that just because he says that's what something is, doesn't mean that's what you may interpret it as. Does that make sense? Yes?
>
> Okay. All right. You may proceed.

* * *

Additionally, during Mr. Barkhurst's testimony, the trial court specifically instructed the jury as to the disarming of the alarm, stating:

> you're the trier of fact and how the evidence bears out and who disarmed the alarm will be a decision you make. Mr. Barkhurst is testifying as to the documents that were provided by Alarm.com and you've heard testimony from Mr. [Jason] DaCosta from Alarm.com and his explanation of those things, so you'll rely on your collective memories; you'll be the decider of who disarmed or armed that alarm [at 1374 Hillcrest, Akron, Ohio 44307].

Mr. DaCosta previously explained, "we just know that a code was put into the [1374 Hillcrest Avenue] keypad and in our cloud on the website that code is assigned to somebody who entered in the name Stanley Ford so we don't know who did that." The jury was also instructed, "[y]ou are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence." Again,

we assume the jurors followed the instructions of the trial court and relied upon their own collective memories of the testimony and evidence in making any factual determinations. *State v. Braden,* 98 Ohio St.3d 354, 2003-Ohio-1325, ¶ 87. ("The instruction was clear, and we can assume that the jury followed the trial court's instructions.")

**{¶43}** Accordingly, Mr. Ford's fourth assignment of error is overruled.

**ASSIGNMENT OF ERROR V**

**THE TRIAL COURT ERRED WHEN IT FAILED TO SUPPRESS STATEMENTS UNLAWFULLY OBTAINED AFTER MR. FORD'S UNEQUIVOCAL REQUEST FOR COUNSEL DURING A CUSTODIAL INTERROGATION.**

**{¶44}** In his fifth assignment of error, Mr. Ford argues the trial court erred in failing to suppress statements made during a custodial interrogation on May 23, 2017, based on his belief the statements were unlawfully obtained after he made an "unequivocal" request for counsel.

**{¶45}** A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id., citing State v. Mills,* 62 Ohio St.3d 357, 366 (1992). Thus, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside* at ¶ 8. "Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.,* citing *State v. McNamara,* 124 Ohio App.3d 706 (4th Dist.1997).

**{¶46}** "Invocation [of the right to counsel] and waiver are entirely distinct inquiries, and the two must not be blurred by merging them together." *State v. Raber*, 9th Dist. Wayne No. 09CA0065, 2010-Ohio-4066, ¶ 16, quoting *Smith v. Illinois*, 469 U.S. 91, 98 (1984). "First, courts

must determine whether the accused actually invoked his right to counsel." *Raber* at ¶ 16, quoting *Smith* at 95. A waiver-of-invocation inquiry becomes relevant only after a proper invocation occurs. *Id*. "If an accused makes a statement concerning the right to counsel 'that is ambiguous or equivocal' or makes no statement, the police are not required to end the interrogation [] or ask questions to clarify whether the accused wants to invoke his or her Miranda rights." (Internal citation omitted.) *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010), quoting *Davis v. United States*, 512 U.S. 452, 459 (1994). Accordingly, we must now consider whether Mr. Ford unambiguously and unequivocally invoked his right to counsel.

**{¶47}** "The question whether a suspect invoked his or her right to counsel is an 'objective inquiry.'" *Raber* at ¶ 17, quoting *Davis* at 459. Further, a suspect's alleged invocation must be examined "not in isolation but in context." *Id*. quoting *State v. Murphy*, 91 Ohio St.3d 516, 520-521 (2001). "[A] reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel * * * do[es] not require the cessation of questioning." (Emphasis sic.) *Davis* at 459. "For example, statements such as, 'I think I need a lawyer,' 'Maybe I should talk to a lawyer,' and 'I think that I would like an attorney' have been deemed too ambiguous to invoke the Miranda right to counsel." *State v. Zaffino*, 9th Dist. Summit No. 21514, 2003-Ohio-7202, ¶ 58, quoting *State v. Henness*, 79 Ohio St.3d 53, 63 (1997); *Davis* at 462; and *State v. Taylor*, 9th Dist. Medina No. 2783-M, 1999 WL 61619, *2. "If ambiguous requests for counsel could suffice for invocation purposes, '[p]olice officers would be forced to make difficult judgment calls about whether the suspect in fact wants a lawyer even though he has not said so, with the threat of suppression if they guess wrong.'" *Raber* at ¶ 17, quoting *Davis* at 461.

**{¶48}** On May 23, 2017, Mr. Ford was transported in handcuffs by the Akron Police to the Akron Police Department and placed in an interview room.[5] Approximately 20 minutes later, at 10:58 a.m., Sergeant Troy Looney and Detective John Bell entered the interview room. After an initial exchange of biographical and contact information, Sergeant Looney informed Mr. Ford he was going to read him his rights and Mr. Ford needed to respond "yes" or "no." The following exchange then occurred :

* * *

SERGEANT LOONEY: You have the right to remain silent. Do you understand that?

MR. FORD: Yes.

SERGEANT LOONEY: Okay. Anything you say can and will be used against you in a court of law. Do you understand that?

MR. FORD: Yes.

SERGEANT LOONEY: You have the right to talk to your lawyer, have him or her present with you while you're being questioned. Do you understand that?

MR. FORD: Yes.

SERGEANT LOONEY: If you cannot afford to hire a lawyer, one will be appointed to represent you before to any questioning, if you wish. Do you understand that?

MR. FORD: Yes.

SERGEANT LOONEY: You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand that?

STANLEY FORD: Yes.

* * *

[5] The interview was video-taped and recorded and lasted approximately 4 hours and 15 minutes.

Sergeant Looney informed Mr. Ford that the Akron Police had done a lot of work in the past couple days and there were new developments in the case. Detective Bell informed Mr. Ford there are now warrants out for his arrest, and Mr. Ford asked, "[f]or what?" Detective Bell then asked Mr. Ford to talk about the day in question, May 15, 2017, and to tell them about the fire. Detective Bell further asked Mr. Ford to "go back to the very beginning of [this], the reason why we came to your house initially." Mr. Ford responded, "Okay. Let's hold it. I'd rather have counsel now." Sergeant Looney indicated, "Okay," and Mr. Ford continued, "[b]ecause you guys got warrants that I did it. I'm telling you I didn't do it. I'd just rather have counsel now." Sergeant Looney told Mr. Ford "if at any time you choose to talk to us," we are still available. Detective Bell then asked Sergeant Looney to "explain" Mr. Ford's charges. Sergeant Looney told Mr. Ford he has seven charges and offered to show him. At that time, Mr. Ford stated, "I don't know how I'm being charged. I didn't do it. That's stuff I didn't do." Sergeant Looney indicated they wanted to speak with Mr. Ford if he wanted to speak with them. Mr. Ford said, "[n]o," and then continued, "I'd rather have counsel now because you're accusing me of something I didn't do." Mr. Ford then asked, "[w]hat are you going to do? You guys already got a warrant[,]" and then stated, "[y]ou gonna take me to jail." Sergeant Looney inquired, "[d]o you want to keep talking to me[,]" and Mr. Ford responded, "I'd rather talk to a lawyer, man." After telling Mr. Ford he has seven counts of aggravated murder against him, Mr. Ford asked, "[s]o what's going to happen now?" Detective Bell responded that Mr. Ford was being charged with arson. Mr. Ford continued asking why he was being charged and continued to deny his involvement in the fire, indicating he "wouldn't wish that on anybody. " After additional back-and-forth conversation between Mr. Ford, Sergeant Looney and Detective Ball, wherein Mr. Ford continued to repeatedly deny involvement in the fire and stated, "if I could help you, I would, man[,]" Sergeant Looney re-read

Mr. Ford his *Miranda* rights at 11:06 a.m. Mr. Ford answered "yes" to each question and the interview continued for several more hours.

**{¶49}** In denying Mr. Ford's motion to suppress, the trial court reasoned:

* * *

> There is no dispute that [Mr. Ford] was advised of his Miranda rights on two separate occasions. This first time was at 10:58 a.m. Approximately three minutes after being advised of those rights, [Mr. Ford] indicated "[* * * ] I would rather have counsel now." Based on this statement it is clear that [Sergeant] Looney was in fact terminating the interrogation and informing [Mr. Ford] that if he wished to continue to talk that [Sergeant] Looney wanted to listen. [Sergeant] Looney then, in attempting to advise [Mr. Ford] of the charges he was facing, was inundated with questions by [Mr. Ford]. For the next five minutes [Mr. Ford] continued to engage [Sergeant] Looney and Detective Bell in conversation. At 11:06 a.m.[,] [Sergeant] Looney advised [Mr. Ford] of his Miranda warnings for a second time, to which [Mr. Ford] indicated he understood each one and then proceeded to answer [Sergeant] Looney and Detective Bell's questions over the next 3 ¾ hours.
>
> * * *
>
> [Mr. Ford's] statements "I'd rather have counsel now" and "I'd just rather have counsel now" were initially treated by [Sergeant] Looney as an unequivocal invocation of [Mr. Ford's] right to counsel, thereby terminating the interrogation. [Mr. Ford's] inability to remain silent over the next five minutes, as indicated by his repeated questions and declarations of his innocence, provided no guidance and made it nearly impossible for [Sergeant] Looney and Detective Bell to engage in an objective inquiry as to whether [Mr. Ford] unambiguously invoked his right to counsel and how to proceed in light of that ambiguity. []
>
> [Sergeant] Looney and Detective Bell were not required to make the difficult decision about [Mr. Ford's] unclear intent once [Mr. Ford] continued to make statements. In light of [Mr. Ford's] unclear intent regarding either his waiver or invocation of his right to counsel, [Sergeant] Looney out of an abundance of caution conducted a second objective inquiry by again advising [Mr. Ford] of his Miranda rights, at which time [Mr. Ford] indicated he understood those rights and proceeded to speak with [Sergeant] Looney and Detective Bell for the next 3¾ hours. While [Sergeant] Looney and Detective Bell treated [Mr. Ford's] statements "I'd rather have counsel now" and "I'd just rather have counsel now" as invoking his right to counsel, this [c]ourt finds those statements are ambiguous and equivocal, and therefore not an express invocation of [Mr. Ford's] right to counsel.
>
> * * *

**{¶50}** We accept the trial court's findings of fact, which have not been challenged by Mr. Ford, because they are supported by competent, credible evidence.

**{¶51}** Further, based upon this record, we cannot say the trial court erred in denying Mr. Ford's motion to suppress and admitting Mr. Ford's May 23, 2017 statements into evidence. Importantly, Mr. Ford has not argued he did not understand his *Miranda* rights or that his statements were involuntary or the product of coercion. The record does not reveal Sergeant Looney or Detective Bell made any threats or promises to Mr. Ford. Indeed, Mr. Ford's remarks that he would "rather" have counsel now, or talk to a lawyer, were not definitive. While these remarks indicate a preference for counsel, they do not rise to a level of the invocation of Mr. Ford's right. *See State v. Stover*, 9th Dist. Lorain No. 96CA006461, 1997 WL 193333, *3 (Apr. 16, 1997) (This Court reversed a ruling suppressing the defendant's statements where the defendant made five ambiguous or equivocal references to his attorney, including: (1) "My lawyer won't make any money today[;]" (2) "I feel like, talk to my, have my lawyer present[;]" (3) "He said he was going to come here he said yesterday, today's Friday right[;] (4) "He said he was [supposed] to come yesterday or today"[;] (5) "Well I mean, I'd still like to have my lawyer here[.]"). *Compare State v. Tench*, 156 Ohio St.3d 85, 2018-Ohio-5205, ¶ 90, (where the Supreme Court of Ohio indicated the defendant unambiguously invoked his right to counsel by stating he "need[ed] a number out of [his phone] * * * to *call [his] attorney*." (Emphasis in original.))

**{¶52}** Mr. Ford's multiple ambiguous references regarding counsel, in conjunction with his ongoing questions about the investigation and assertions of innocence, created enough confusion for Sergeant Looney to re-*Mirandize* Mr. Ford in order to keep speaking with him. *See State v. Murphy*, 91 Ohio St.3d 516, 520, 2001-Ohio-112. ("If the suspect says something that may or may not be an invocation of the right, police may continue to question him; they need not treat

the ambiguous statement as an invocation or try to clear up the ambiguity.") After being re-*Mirandized*, Mr. Ford spoke with Sergeant Looney and Detective Bell, answering their questions for an additional 3¾ hours. During this portion of the interview, Mr. Ford did not unambiguously or unequivocally invoke his right to counsel.

**{¶53}** It was during this portion of the interview Mr. Ford made hypothetical statements about not seeing any fire *if* he had been outside at the relevant time, and *if* the police had him on camera. For example, Mr. Ford stated, "[i]f I would have saw a fire down there at that time, I would have screamed -- I would have screamed at the top of my lungs, tell the neighbors a fire, knock on somebody's door. I didn't see no damn fire." Mr. Ford also stated, "[s]ee, if you got me on camera doing that, there wasn't no damn fire down there. There wasn't no fucking fire down there. I'm telling you guys the truth. There wasn't no fucking fire down there, man." These statements, which were *not* confessions to the crimes, were subsequently admitted into evidence at trial. Moreover, during this portion of Mr. Ford's police interview, he continued to adamantly deny any involvement in the 693 Fultz Avenue fire.

**{¶54}** Therefore, the trial court did not err in allowing Mr. Ford's statements into evidence.

**{¶55}** Accordingly, Mr. Ford's fifth assignment of error is overruled.

## ASSIGNMENT OF ERROR VI

**THE TRIAL COURT ERRED WHEN IT ORDERED MR. FORD TO SOLITARY CONFINEMENT FOR SIX SEPARATE DAYS-THE ANNIVERSARIES OF THE OFFENSES AND THE BIRTHDAYS OF THE FIVE CHILD-VICTIMS.**

**{¶56}** In his sixth assignment of error, Mr. Ford argues the trial court erred in sentencing him to solitary confinement on six separate days, each year, for the remainder of his life. The State concedes the portion of Mr. Ford's sentence ordering him to solitary confinement must be vacated because it is contrary to law.

**{¶57}** "Pursuant to R.C. 2953.08(G)(2), an appellate court may vacate a sentence and remand for a new sentencing hearing if the sentence is contrary to law." *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, ¶ 14, citing *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 4. Indeed, sentencing statutes do not contain a provision authorizing courts to impose solitary confinement as punishment. "It is the legislature who fixes the available types of punishment." *State v. Vaughn*, 7th Dist. Carroll No. 683, 2002-Ohio-5046, ¶ 23, rev'd on other grounds, 2003-Ohio-7023. Ohio courts have recognized that sentences of solitary confinement are contrary to law. *State v. Yirga*, 3d Dist. Wyandot No. 16-01-24, 2002-Ohio-2832, ¶ 40-42. *See also State v. Mendoza*, 6th Dist. Wood No. WD-10-008, 2011-Ohio-1971, ¶ 26; *State v. Williams*, 8th Dist. Cuyahoga No. 88737, 2007-Ohio-5073, ¶ 20; *State v. Batton*, 9th Dist. Lorain No. 96CA006505, 1997 WL 600661, *5 (Sept. 17, 1997). In *State v. Creel*, 9th Dist. Summit No. 26334, 2012-Ohio-3550, ¶ 6, this Court vacated a portion of Mr. Creel's sentence, and remanded for resentencing, where the trial court "ordered [him] to spend every Christmas Eve in solitary confinement during his incarceration."

**{¶58}** Here, the trial court ordered Mr. Ford to spend January 10th, January 15th, April 18th, May 17th, December 8th, and December 23rd in solitary confinement for the duration of his

life. This Court understands the trial court's reasoning for imposing such a sentence, but the current sentencing statutes do not contain a provision authorizing trial courts to impose solitary confinement as punishment. Based upon our precedent, and because the trial court had no statutory authority to impose a condition that is contrary to law, we vacate only the portion of Mr. Ford's sentence that imposes solitary confinement and issue a limited remand for resentencing on this specific issue. *See Wilson* at ¶ 14; *Saxon* at paragraph three of the syllabus.

**{¶59}** Accordingly, Mr. Ford's sixth assignment of error is sustained.

III.

**{¶60}** Mr. Ford's first, second, third, fourth, and fifth assignments of error are overruled, and Mr. Ford's sixth assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is affirmed, in part, reversed, in part, and remanded for further proceedings consistent with this decision.

Judgment affirmed, in part,
and reversed, in part.

---

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to

mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

BETTY SUTTON
FOR THE COURT

HENSAL, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

VICTORIA BADER and CRAIG JAQUITH, Assistant State Public Defenders, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.