IN THE COURT OF APPEALS
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY, OHIO

STATE OF OHIO,	:	Appeal No. CA 029006
Plaintiff-Appellee,	:	Trial No. 2019-CR-01088
vs.	:	
TEAVEN CURTISS,	:	
Defendant-Appellant.	:	
	:	

Appeal from the Montgomery County Common Pleas Court

BRIEF OF DEFENDANT-APPELLANT TEAVEN CURTISS

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IV. STATEMENT OF THE CASE

On June 24, 2020, Curtiss was indicted on one count of rape of a person less than ten years of age and one count of gross sexual imposition of a person less than thirteen years of age. (Indictment, Docket ID: 34691756). The case proceeded to trial in December of 2020. After a four-day jury trial, Curtiss was convicted of both indicted counts. Curtiss was sentenced to mandatory life without parole on the rape count and 60 months, to be served consecutive to the mandatory life sentence on the gross sexual imposition count. (Amended Termination Entry, Docket ID: 35135130). Following the verdict, Curtiss filed a timely Notice of Appeal on January 13, 2021. (Notice of Appeal, Docket ID: 35161370)

V. STATEMENT OF THE FACTS

The relevant facts begin in January of 2017 when Montgomery County Child Services ("MCCS") was made aware of domestic abuse at the home of Erica Jones. At the time, Jones was the mother of two children. Her oldest, Kh.J., was a four-year-old boy (born in June of 2021) and K.J., the alleged victim in this case, was a three-year-old girl (born in September of 2013). On January 17, 2017, MCCS received a referral that Kh.J. had been physically abused by Jones' "paramour," D'Marco Hoskins. (Sealed Court's Ex. I[1], 08/10/17 filed affidavit of Lisa Brown). MCCS was told that Kh.J had been hit with a belt and had bruising "up and down his arms." (*Id.*). Jones reported to MCCS that the bruising was caused by K.J. hitting Kh.J. with a toy. (*Id.*).

A few months later, on April 13, 2017, Jones gave birth to her third child, L.H, daughter of Hoskins. Two weeks after the birth of L.H., Hoskins was arrested for domestic violence against

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[1] Sealed Court's Exhibit I was *not disclosed* to the parties. Thus, undersigned counsel does not know definitively what is in the exhibit. However, since the filing of the Motion for Disclosure of all Child Services Records in this appeal, counsel has received, from Curtiss' family law attorney, records that counsel suspects are included in Sealed Court's Exhibit I. Thus, when counsel in this brief seeks to imply the record is likely in Sealed Court's Exhibit I, counsel will cite to that exhibit. Upon request from this Court, counsel will, under seal, supplement this record with the records in counsel's possession that are believed to be in Sealed Court's Exhibit I.

Jones. (*Id.*). Caseworkers observed marks on Jones' neck. (*Id.*). Then again, a few months later, on July 21, 2017, MCCS received another referral. This time, Jones reported she was afraid Hoskins would kill her. Jones stated that Hoskins held L.H. while hitting Jones and dragging Jones by the hair. (*Id.*). After a seven-month period of domestic abuse, MCCS established a safety plan to protect the children. (*Id.*). Five days into the safety plan, Jones violated it. (*Id.*). In August of 2017, a magistrate judge for the Montgomery County Juvenile Division, granted interim temporary custody to MCCS. (*Id.*, 08/11/17 Order).[2]

When the children were removed from Jones' care, they were separated. K.J. and L.H. were placed in foster care initially. Kh.J. was placed in St. Joseph's. (Sealed Court's Ex. I, 02/13/18 Updated Report and Recommendations of Guardian Ad Litem). Jones reported to Sarah Lipps, a licensed social worker who testified on the first day of trial, that K.J. had been *physically abused* at this foster home. (Sealed Court's Ex. I, 10/12/18 SBHI Diagnostic Evaluation by Sarah Lipps).

K.J. was removed from her initial foster placement and placed in the care of Teaven Curtiss (who the children call "Papaw" Teaven) in November of 2018. During trial Tanja Curtiss reported immediate problems with K.J.'s behaviors and bed-wetting once K.J. left the foster home and came to live with the Curtiss'. (Tr. of Proc., p. 823-24). Kh.J. was placed in the Curtiss household one month later in December of 2017.

Jones made allegations against Curtiss in July of 2018. Roughly eight months after the children were placed at the Curtiss home, Jones had the two children for an overnight visit. After

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[2] Episodes of domestic violence continued after the children's removal. Another incident occurred in December of 2017, this time between Jones and Jones' mother and sister. (Sealed Court's Ex. I, 02/13/18 Updated Report and Recommendations of Guardian Ad Litem). The police were called to the house but Jones' mother refused to speak with them. (*Id.*). Jones reported to the guardian ad litem that Jones' sister put Jones in a headlock and held her down on the bed. In contrast, Jones' sister and mother reported that Jones pulled a knife on her grandmother who called the police. (*Id.*). Also in December of 2017, Hoskins, despite a PTO order, went to Jones' home. (*Id.*). He broke into the house through a window and tried to choke Jones. (*Id.*). Jones did not call the police. (*Id.*). Incidentally, by the time of trial, Jones had a fourth child. (Tr. of Proc., p. 418). Her youngest, Demarco Hoskins Jr., son of Hoskins, was born December 11, 2018 (*Id.* at 481).

Jones bathed the two children, she was purportedly applying lotion onto K.J.'s legs when she noticed a trail of blood coming from K.J.'s vagina and puddling onto the floor. (Tr. of Proc., p. 390). According to Jones, Kh.J., who was standing in the doorway, yelled out "Papa Teaven did that!" (*Id.* at 394).[3] Jones did not take K.J. to the hospital. Jones did not call the police.

Jones' testimony regarding the bleeding incident was contested. On direct examination, Jones testified that she picked up K.J. and Kh.J. from Curtiss late on a Saturday evening. (Tr. of Proc., p. 389). She was supposed to have picked them up on that Friday but she could not because the kids were at a Curtiss family function. (*Id.* at 389-90). Jones allegedly observed the bleeding from K.J.'s vagina on Sunday evening after bathing them. (*Id.*). She was supposed to return the children to the Curtiss's Sunday evening. (*Id.*). However, Curtiss was *not with the children on that Friday*. Using text messages to refresh her recollection, Tanja Curtiss testified that on Friday, July 20th, Curtiss was not with the children. (*Id.* at 832-35). Further, Curtiss was not around the children on Saturday, July 21st. (*Id.*). Even further, Tanja Curtiss testified that the children were with her on that Sunday as well. (*Id.* at 836). She knew that because she had sent texts to Teaven Curtiss on that Sunday about how K.J. had colored all over Kh.J. with a pink marker. (*Id.*). "It was all over his face; it was all over the side of his body down to his butt." (*Id.*). She texted the information to Teaven Curtiss because he was not at the house. He had been gone that entire weekend on a work trip. Tanja Curtiss does not remember Jones picking up the children that particular weekend. (*Id.* at 837).

Jones reported that, for the day following the bleeding incident, Kh.J. had a prescheduled doctor's appointment with Dr. Sylvia Parks to address an unrelated issue. At this appointment, Jones asked Dr. Parks to examine K.J. At trial, Dr. Parks testified that Jones asked Dr. Parks to examine

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[3] Additionally, the initial sexual abuse allegations against Curtiss included a claim by Kh.J. that he had also been abused by Curtiss. In a notarized and signed affidavit completed by Michel Williams, an employee of MCCS, Ms. Williams wrote that Kh.J. reported that his grandfather touched his private area. Kh.J. told his grandfather to stop touching him but he did not stop. (Sealed Court's Ex. I, 11/19/18 Affidavit of Williams). However, when Kh.J. was asked during his forensic interview, played for the jury during trial, if he had ever been touched, he said "no." (Tr. of Proc., p. 696). The inconsistency was likely never known to the defense, much less the jury.

K.J. because K.J. had been scratching her private area. (Tr. of Proc., p. 473-74). Neither Jones, Kh.J., nor K.J. mentioned K.J.'s bleeding or alleged sexual abuse claim to Dr. Parks. (*Id.*). Dr. Parks testified that the findings from her examination of K.J. were normal. (*Id.* at 477).

Later in the evening of July 25, 2018, Jones sent an email to the case worker, Lisa Brown about the alleged abuse. The actual email is different from the version read at the trial. In the actual email, Jones wrote "She told me papaw [Curtiss] and [J.C.][4] touched here there..." (Sealed Court's Ex. II, p. 2). J.C. is Curtiss' son who lived at Curtiss' home with K.J. and Kh.J.. According to a narrative written by Detective Joshua Spears, who testified at trial, J.C. had "a history of being a sexual offender." Further, "It should be noted that the other juvenile in the home had been flagged in SACWIS as having sexually abused his 5-year-old half-sister."[5]

Disagreements between Jones and the Curtiss' rose early and often. Significantly, Jones "stressed that 99% of the calls to MCCS were from Teaven and feels his motivation is to be granted custody of the kids." (Sealed Court's Ex. I, Psychological Evaluation Report faxed 07/16/18). "[Jones] openly stated that she doesn't like [Teaven and Tanja Curtiss] and they don't like her." (*Id.*). Curtiss expressed feelings that Jones was "ruining" Kh.J. by failing to provide structure. Jones expressed frustration at Curtiss for frequenting leaving the children in the care of Curtiss' teenage son, J.C.. Jones voiced problems she found with Curtiss' care of the children. She reported they were not allowed to drink water after 6:30 pm and that he yelled at them often. (*Id.*). Moreover, money was an issue for custody. Both children receive social security benefits which went to who had custody. (Sealed Court's Ex. I, 03/27/2018 Motion to Terminate Support).

Importantly, one month prior to the abuse allegation, Jones expressed extreme dissatisfaction about not getting her kids back immediately. During a period of 12-16 weeks, the

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[4] The version of the email read to the jurors omitted reference to J.C. (Tr. of Proceedings, p. 400, State's Ex. 3).

[5] Neither this report nor any testimony regarding this information is in the record. It was excluded from the record due to an incorrect rape shield ruling by the trial court. This issue is discussed at length in section H.

children's time with Jones would increase. (Sealed Court's Ex. I, 02/13/18 Updated Report and Recommendations of Guardian Ad Litem). However, the case worker noted that Jones was impatient with the process and wanted the children back immediately. (*Id.*). As part of her psychological evaluation, Jones wrote "I suffer from missing my children." (Sealed Court's Ex. I, Psychological Evaluation Report faxed 07/16/18). "I feel like I'm living in a nightmare since my kids were taken." (*Id.*).

Then, on July 25, 2018, the same day she sent the email regarding the allegations to her case worker, Jones participated in a family court hearing regarding the children. (Tr. of Proc., p. 443). Jones testified at trial that on July 25, she was advised that she could file for emergency custody of the children. (*Id.*). Then, later that evening, Jones sent an email to the case worker, Lisa Brown, reporting K.J.'s alleged disclosure. (State's Ex. 3). In the email, Jones wrote "I was advised by the magistrate to file for emergency custody due to neglect on [Kh.J]'s medication and now the situation with [K.J.]." (*Id.*). Further, "I also asked downstairs if you guys had filed anything to get a earlier court date and they said you have not so that is why their recommendation as to file for emergency custody I believe is what she said it was called." (*Id.*).

In April of 2018, Jones underwent a psychological evaluation report to "assess factors related to her parenting ability and ability to provide an appropriate caregiving environment for her children…". (Sealed Court's Ex. I, Psychological Evaluation Report faxed 07/16/18). This report indicates Jones had coached her children to provide inaccurate information. The psychologist noted with respect to the January 2017 incident where Kh.J. was hit by Hoskins. "Records indicate that when [Kh.J.] was interviewed, he did not appear to be comfortable discussing the situation and eventually stated that his sister hit him, but had to look at his mother to get information on what he was hit with and did report that he was hit with a track from a race care set. When asked by the casework if D'Marco ever hit him, he looked at his mother for an answer." (*Id.*). The evaluation lists

another incident of Hoskins physically abusing Kh.J. In February of 2017. (*Id.*). Again, there was conflicting information between that gathered by the case worker and that provided by Jones. (*Id.*).[6]

Consequently, upon receiving the July email from Jones, Lisa Brown, having been aware of the family situation, Jones' inconsistencies, and a psychologist's determination that the kids had been coached in the past, reasonably decided to investigate the alleged sexual abuse claim against Curtiss. As detailed in an email sent on October 19, 2018, Brown reached out to Dr. Parks given that Jones' email indicated Dr. Parks evaluated K.J. for signs of sexual abuse. However, Dr. Parks did *not confirm Jones' story.* (Sealed Court's Ex. II, p. 7). At trial, Dr. Parks testified that Jones asked Dr. Parks to examine K.J. because K.J. had been scratching her private area. (Tr. of Proc., p. 473-74). Jones never disclosed K.J.'s alleged disclosure about the abuse to Dr. Parks during the examination. (*Id.*). Further, Brown interviewed K.J. *who did not corroborate the claim.* (Sealed Court's Ex. II, p. 7). Brown felt that Kh.J. had been coached to corroborate the claim. (*Id.*) Curtiss was not charged until another MCCS employee, Melissa Lowe, received a report of the allegations in October of 2018 and reported the allegations to law enforcement. (Tr. of Proc., p. 613-14).

In October of 2018, Kh.J. and K.J. participated in forensic interviews. Jennifer Kinsley conducted both interviews on the same day. A recording of K.J.'s interview was played to the jury. (Tr. of Proc., p. 647-87, State's Ex. 1). Notably, when asked "Has anyone, [K.J.], seen Papaw touch your coco?", K.J. answered "You can talk to my mom." (*Id.* at 682). A partial recording of Kh.J.'s forensic interview was also played to the jury. (Tr. of Proc., p. 689-97). K.J. did testify at trial. At the time of trial, she was seven years old. At a pretrial hearing on November 12, 2020, the trial court

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[6] Jones denied to the psychologist statements that she had made to Lisa Brown, the case worker. Jones denied ever having bruises caused by Hoskins. (*Id.*). Jones further denied approaching her mother with a knife in December of 2017. However, when the psychologist questioned Kh.J. about the incident, he said Jones picked up a knife and was mad. (*Id.*). Kh.J. changed his story a few minutes later and said his grandmother chased Jones with the knife. (*Id.*). According to the psychologist, "Thus, his reports are inconsistent and indicative of considerable coaching by family members." (*Id.*). K.J. was also interviewed. Again, according to the psychologist, "Thus, her comments also indicate coaching by the family." (*Id.*).

announced that the court had just interviewed K.J. and found her to be competent. (Tr. of Proc., p. 52-53). The trial court conducted the competency voir dire of K.J. without anyone else present during the questioning. Neither the state nor defense counsel was offered the opportunity to observe the voir dire. Kh.J. was not called as a witness to testify.

The facts described thus far would almost be unrecognizable to the jury. Due to prosecutorial overreach and errors by the trial court (capitalized upon by the state), an entirely false narrative was presented to the jury. For example, the scope of the domestic violence was kept from the jury. This allowed the state the ability to argue that Jones reported *just one* incident of domestic violence and the authorities took her kids away immediately as a result of that one incident. According to the state's false narrative, Jones did not trust the authorities because when Jones first called for help due to domestic violence, her kids were taken away. (Tr. of Proc., p. 884). "What kind of trust in the system can we expect [Jones] to have when they take her kids away when she calls for help." (Tr. of Proceedings). In addition, the other allegations of sexual abuse were kept from the jury. The state used the exclusion to its advantage by arguing "...The Defendant was named by name by the victim. There is no one else. This is not a case of whodunit." (Tr. of Proc., p. 876). There literally was someone else named by the victim at the exact same time. Yet, that fact never made it to the jury. Further, Jones' motive and history of lying was kept from the jury as well as her obvious conflicts with Curtiss (he was the one reporting her violations of court orders). The jury never learned that two professionals, the case worker and the psychologist who did the parenting report, concluded that Jones had a history of coaching her children. As a result, the state was able to argue "[Jones] has no motivation to lie about this. She has her kids back. She got them back already." As the below issues are developed, a pattern will emerge whereby the errors by the trial court along with acts of prosecutorial misconduct get magnified exponentially in the state's closing argument.

VI. ARGUMENT

A. First Assignment of Error: The trial court erred when it failed to disclose relevant MCCS Records in violation of Curtiss' right to due process and a fair trial.

As this Court recognized in *State v. Cochran*, the United States Supreme Court has held "that a defendant's due process right to a fair trial entitles him to an in-camera inspection by the trial court of confidential children services records to assess whether the records contain evidence that is

material to the defendant's guilt." (Citation omitted). *State v. Cochran*, 2nd Dist. Greene No. 2019-CA-41, 2020-Ohio-3054, ¶ 38. Further, "Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome. *Id.* A trial court has the inherent power to

> order disclosure of such records or reports where (1) the records or reports are relevant to the pending action, (2) good cause for such a request has been established by the person seeking disclosure, and (3) where admission of the records or reports outweighs the confidentiality considerations set forth in R.C. 5153.17 and R.C. 2151.421(H)(1).

Id. at ¶ 40. "When considering pretrial discovery, the results of an in camera review by a judge and the judge's determinations of what is discoverable are evaluated by an appellate court under an abuse-of-discretion standard." *Id.* at ¶ 35.

Trial counsel recognized the significance of the MCCS[7] records and, on July 27, 2020, filed a motion requesting the trial court conduct an in-camera review of the children's services records of K.J. and Kh.J. (Motion Requesting Order For In-Camera Review of Children's Services Records, Docket ID: 34778661). In the motion, trial counsel asserted the records "contain potentially exculpatory evidence and evidence that is necessary to prepare a full and fair defense, including preparation of direct and cross examination of witnesses." (*Id.*).[8]

On August 31, 2020, the trial court released to the parties, sealed Court's Exhibit II - seven pages of documents from the MCCS records. The trial court determined only these seven pages were relevant and discoverable.[9] (Entry Filing Exhibits Under Seal, Docket ID: 34857981). At the same time,

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[7] By MCCS, counsel is referring to both Montgomery County Child Services and Montgomery County Jobs and Family Services as the Child Services is a division of the bigger Jobs and Family Services entity.

[8] Prior to the filing of the motion, the issue of the records were discussed with the trial judge. (Tr. of Proc., p. 4). Defense counsel specifically requested "foreign county records that relate to the placement of a teenage boy in the house from another outside CSB." (*Id.*). Defense counsel was requesting records pertaining to Curtiss' son, J.C..

[9] After the initial release of the seven pages of MCCS records, it became apparent that additional, relevant records were needed. On November 23, 2020, the state filed a motion for the trial court to take another in-camera look at the MCCS records. (*See* Motion for Court to Review In Camera Children's

the trial court also filed under seal Court's Exhibit I, which is a CD of the complete copy of the MCCS records that the trial court reviewed. (*Id.*). This CD was not released to the parties. *Id.*

Counsel believes that a review of Court's Exhibit I will show that the trial court abused its discretion by failing to release records that, consistent with *Cochran*, should have been released to the parties. As stated previously in footnote two of this document, counsel has now come into possession of records that counsel believes are likely in Court's Exhibit I. Most of the documents counsel has are actually file stamped indicating they were filed with the Montgomery County Juvenile Court.

Curtiss was prejudiced by the trial court's failure to disclose all of the relevant, material records. Trial counsel did not have all of the records pertaining to the repeated domestic abuse. Trial counsel would have used those records to plan and conduct a cross examination of Jones about the truth of the domestic violence. Further, trial counsel could have impeached Jones about the domestic violence when Jones, as she did in trial, lied about it. The documentation of the other alleged sexual abuse claims did, exactly as trial counsel predicted in his request for the records, contain potentially exculpatory evidence. Given the lack of physical evidence of abuse, the state argued that certain behaviors demonstrated by K.J. indicated she had been sexually abused. Dr. Parks, K.J.'s physician described regression of potty-training skills. (Tr. of Proc., p. 479). Sarah Lipps, K.J.'s school therapist, testified she observed temper tantrums and inattentiveness from K.J. which can indicate trauma. (Tr. of Proc., p. 361-62). This brief will refer to the inappropriate sexual knowledge, bed-wetting, temper tantrums, and inattentiveness as "problematic behaviors."

Services Records, Docket ID: 35059677). In the motion, the state articulated that the trial court had only released records "directly dealing with the circumstances of the victim's disclosure of sexual abuse and the caseworker's response to that disclosure." (*Id.*) The state indicated to the trial judge that the records released were too narrow. (*Id.*). "In light of some of the testimony at the recently held 807 hearing, the State new believes other portions of the record may be relevant and asks this Court to consider releasing additional sections of the record." (*Id.*). After a pretrial hearing, the State argued that the circumstances leading to Erica Jones' loss of temporary custody of her children was at issue and "may be relevant at trial." (*Id.*). In response to the State's motion, the trial court did release additional pages of the MCCS records. (Tr. of Proc., p. 124).

However, the problematic behaviors are not *per se* evidence of sexual abuse. Brooke Lowrie, a mental health therapist at Dayton Children's Hospital and a licensed social worker, testified that regression of potty-training skills is not always associated with sexual abuse. (Tr. of Proc., p. 527). In fact, K.J. had experienced other trauma, like witnessing domestic abuse and being removed from her home, that could explain the problematic behaviors. Consequently, evidence of trauma to K.J. is *directly relevant* as to whether her problematic behaviors were caused by sexual abuse by Curtiss – or as a result of domestic violence, being removed from her home, and possibly other instances of sexual abuse, including alleged abuse at her prior foster home. (Sealed Court's Ex. I, 10/12/18 SBHI Diagnostic Evaluation by Sarah Lipps). In other words, evidence of the other allegations were exculpatory as alternative explanations for K.J.'s problematic behaviors.

Separately, the undisclosed MCCS records likely demonstrate animosity between Jones and Curtiss. The records likely demonstrate Jones was angry that the state took her children and that she believed Curtiss made the reports that resulted in her children being taken and reports that she not complying with her safety plan. Yet, Curtiss' trial counsel was prevented access to the documents which would have enabled him to fully plan and conduct his cross examination of Jones. As a result, the state was able to proceed with claiming incredulity that Jones would fabricate a claim against Curtiss. In closing, "If we think that Erica is somehow, for reasons unknown, un – undetermined – we think she's just out to get Teaven Curtiss who has done nothing but help her." (Tr. of Proc., p. 885). The state also emphasized that Jones complied with everything she was asked to do, a lie Jones told on the stand and the state then emphasized in closing: "But she—she works her case plan. You heard. She everything she was asked to do." (Tr. of Proc., p. 884). The undisclosed records will show this to be demonstrably false.

Trial counsel should have been afforded the opportunity to investigate whether to call Dr. Rhonda Lilley, the psychologist who conducted the evaluation of Jones. Jones could have testified to Jones' dishonesty about her circumstances, her dislike for Curtiss, and the prior coaching.

The disclosure of all the relevant, material documents from the MCCS records would have changed the outcome of this case. Had trial counsel received the relevant records, he would have been able to prevent the state from proceeding on the false narrative that Jones had her kids taken away after

reporting one incident of domestic violence, she had no motive to lie, and Curtiss was the only person who could have caused K.J.'s problematic behavior and inappropriate sexual knowledge.

B. Second Assignment of Error: The trial court erred when it limited cross-examination of Erica Jones in violation of Curtiss' right to confront, due process and a fair trial.

"The Confrontation Clause of the Sixth Amendment provides: 'In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.'" *Vanlandingham v. McKee*, E.D. Mich. No. 05-10249, 2008 WL 4097406, at *6 (Sept. 4, 2008), citing U.S. Const. Amend. VI. "[T]he Sixth Amendment's right of an accused to confront the witnesses against him is ... a fundamental right and is made obligatory on the States by the Fourteenth Amendment." *Pointer v. Texas*, 380 U.S. 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). "The right of cross-examination includes the right to impeach a witness's credibility." (Citation omitted). *State v. Brewer*, 2nd Dist. Montgomery No. 13866, 1994 WL 461781, at *6 (Aug. 24, 1994). "To be denied the right of effective cross examination constitutes a 'constitutional error of the first magnitude' and no amount of showing of want of prejudice will cure it." (Citation omitted). *State v. Brewer*, No. 13866, 1994 WL 461781, at *6 (Ohio Ct. App. Aug. 24, 1994). Cross-examination has been described as "the greatest legal engine ever invented for the discovery of truth." (Citation omitted). *California v. Greene*, 399 U.S. 149, 158, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970).

Although far less egregious than the case at hand, this Court's decision in *State v. Brewer* offers guidance. In *Brewer*, the issue was whether the defense could admit the text of a prior inconsistent statement. The state argued that once Brewer, a key witness, admitted that he had given a prior inconsistent statement under oath but that he had been lying when he made the statement, the trial court properly excluded text of the prior inconsistent statement. *Brewer*, 1994 WL 461781, at *7. However, this Court concluded,

> In our view, the defense should be permitted to lay the text of the prior inconsistent statement before the jury, not for the purpose of persuading the jury that it is the truth, but for the purpose of showing the jury that the witness has given an inconsistent version of the precise facts upon which the State relies to prove that the defendant committed the charged offense-in this case...

Id. "While the trial court may limit the scope of cross-examination to relevant matters, the trial court may not abridge cross-examination on essential matters by barring the reading into evidence of prior inconsistent statements with which a party plans to impeach a witness." *Id.* at *8.

The case at hand is more egregious because defense counsel's impeachment was *limited at the point of asking questions in the first instance.* The trial court took Jones' credibility off the table, eviscerating Curtiss' right to cross examination of a key witness. Jones was a key witness for the main themes:

State's Theory	Defense Theory
K.J. was sexually abused and raped by Curtiss	Jones fabricated the allegations
K.J. was truthful in her forensic interview	K.J. was coached by Jones
Jones had no motive to lie about the allegations	Jones was motivated to lie about the allegations

Thus, the credibility of Jones was critical. At minimum, it was the center of the theory of defense.

According to the trial court, "She's not on trial, neither is Mr. Hoskins." (*Id.* at 431). In response, trial counsel argued that the line of questing was relevant and that Jones was not being honest. (*Id.*). In response, the trial court stated "...it is beyond, outside the issue of testing her credibility, so..." (*Id.* at 432).

At trial, Jones made statements inconsistent with the record and her own prior statements. On cross examination, Jones testified "Demarco and I had just that one domestic violence." (Tr. of Proc., p. 426). The MCCS records likely show at least four[10] and Jones reported multiple instances to MCCS employees. (Sealed Court's Ex. I). It was not the case that she denied the abuse throughout the duration of their tumultuous relationship. It was the case that she denied the abuse during trial. Trial counsel pointed out to the trial court that there were several incidents, and some of them were against the children. (*Id.*). The trial court, incorrectly, stated that Jones had "admitted that." (*Id.*).

Jones further testified "There were no allegations that Hoskins was violent with the children. (Tr. of Proc., p. 426). In truth, Jones knew there was an allegation Hoskins was violent with Kh.J. in

[10] The trial court's belief that Jones' credibility was off the table likely contributed to the under disclosure of critical MCCS records.

January of 2017. Jones knew that was the incident that kicked off MCCS involvement, not the alleged "single" incident when she called the police. (Sealed Court's Ex. I, 08/10/17 filed affidavit of Lisa Brown). Although Jones contested that K.J. hit Kh.J. and not Hoskins, Jones well knew the allegation existed.[11]

The defense theory was that Jones made up the allegations, she coached the kids to lie, and she did it because she wanted her kids back immediately, needed the money, and hated Curtiss. Not only did the trial court prevent defense counsel from impeaching the credibility of a key witness who clearly had just lied on the stand, the trial court also prevented defense counsel from using other witnesses for impeachment purposes. The state capitalized on the trial court's errors and argued to the jury "Erica sat up there and answered every single question that was asked of her. She didn't get mad." (Tr. of Proc., p. 914).

C. Third Assignment of Error: The trial court erred when it admitted a prejudicial hearsay statement by K.J. in violation of Curtiss' right to confront, due process, and a fair trial.

In K.J.'s forensic interview, she made a statement about a blue and white object that had one finger pointing up and three fingers down. Allegedly, Curtiss used this object to abuse K.J.. Thus, its existence or non-existence was a critical issue at the trial. The state found no such object when it searched the home of Tanja Curtiss, which was the location where the alleged abuse occurred. However, the state did find a pink finger dildo that belonged to Tanja Curtiss. (See State's Ex. 22). Thus, the distinguishing characteristics described by K.J. included the objects color (blue and white) and its shape (one finger up and three fingers down) whereas the distinguishing characteristics of the finger dildo were that it fit on one finger, was ribbed, and was pink. (*Id.*).

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[11] Then, when the trial court barred admission of the guardian ad litem report because it was "a document that is not by statute to be revealed on any other action," defense counsel noted that he had subpoenaed the guardian ad litem to testify. (*Id.* at 432-33). "Hang on a minute. And then we're going to have a hearing on what person is going to say. Because we are not going to try everybody else. Credibility is limited. It is – you cannot discuss every issue in a person's life to establish an issue of credibility, so just remember that." (*Id.* at 433).

The state then used an out of court statement by K.J. about the pink finger dildo to transform it into a blue and white object with one finger up and three fingers down. Detective Spears testified about showing a picture of the pink finger dildo to K.J. Then, the prosecutor elicited clear hearsay testimony with the following question: "And what comment did she make?" (Tr. of Proc., p. 754). Detective Spears answered, "She said it looks like the blue white thing, the one finger up three fingers down." (*Id.*) This consequential out of court statement should not only have been excluded as hearsay, but its admission also violated the Sixth Amendment.

Out of court statements offered against a defendant must be analyzed under cases interpreting the Confrontation Clause of the Sixth Amendment in addition to the evidentiary hearsay rules. The Sixth Amendment requires the prior opportunity for cross-examination for all "testimonial" evidence. *Crawford v. Washington*, 541 U.S. 36 (2004). In *State v. Siler*, the Ohio Supreme Court had occasion to formulate the law involving statements by children to the police or agents of the police. 116 Ohio St. 3d 39, 2007-Ohio-5637, 876 N.E.2d 534, ¶¶ 10-11. The Ohio Supreme Court set forth:

> . . . [T]o determine whether a child declarant's statement made in the course of a police interrogation is testimonial or nontestimonial, courts should apply the primary purpose test: 'Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.'

Id. at 541, citing *Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 2273, 165 L. Ed. 2d 224 (2006). The *Siler* court ultimately held the child's statement was testimonial and should have been excluded under *Crawford*. *Id.* at 536.

The Ohio Supreme Court further addressed the relevance of the age of the child giving the out of court statement. The state argued that the young age of the child foreclosed the possibility of the child's statement being testimonial. The Ohio Supreme Court disagreed, holding "the argument by the state . . . that we should focus on the cognitive limitations of a child who made the statements to police is inconsistent with the primary-purpose test." *Id.* at 541. The Court continued, "We are

aware of no case in which a court has concluded that a declarant's age rendered statements to police nontestimonial." *Id.* at 543.

Thus, a hearsay statement was purposely elicited by the state. The statement was not only hearsay, but its admission further violated Curtiss' Sixth Amendment rights pursuant to *Crawford* and its progeny. The statement was a critical part of the state's case as it permitted the state to introduce the prejudicial evidence of Tanja Curtiss' sex toys, and further permitted the state to convert an irrelevant and prejudicial piece of evidence into an object allegedly used by Curtiss to perpetrate the offense. Finally, the prejudice was made more salient because the defense was unable to cross examine the statement, particularly because there was ample opportunity for cross examination as the previously described object and the pink finger dildo were nothing alike. The prosecution exacerbated the prejudice in closing by discussing the pink finger dildo and then drawing the jury's attention to the testimonial out of court statement: ". . . And you heard about the finger thing. She said, it's like that; one finger up and three fingers down." (Tr. of Proc., Pg. 889). This Court should hold that it was plain error (defense did not object) to admit the statement described above as hearsay and a violation of the Sixth Amendment's right to confrontation.

D. Fourth Assignment of Error: The trial court erred when it admitted Kh.J.'s forensic interview in violation of Curtiss' right to confront, due process, and a fair trial.

". . . [E]ven though [Kh.J.] did not come to court. He has spoken to you with his interview," the state told the jury in closing. (Tr. of Proc., p. 914). The state was explicit in its purpose for playing a CARE house recorded forensic interview of Kh.J.—the recorded interview provided "pretty key pieces of information" about Curtiss' alleged guilt. (*Id.* at 888).

The defense objected, citing hearsay and *Crawford*, to the admission of the CARE house statement of Kh.J.. (Tr. of Proc., p. 637). The state argued that Kh.J.'s statements were for medical purposes and treatment. The trial court overruled the objection stating, "There's likely no confrontation clause issue with [Kh.J] because of his age and the focus being that [Kh.J] would not have intended that this be used in court. And therefore it's not a confrontation clause issue with [Kh.J]." (*Id.*) The trial court further dispensed with the hearsay objection by finding the medical diagnosis and treatment hearsay exception was applicable. (*Id.*)

Questions of whether a trial court violates an individual's Confrontation rights are reviewed under a *de novo* standard. *State v. Rinehart,* 4th Dist. No. 07CA2983, 2008–Ohio–5770, ¶ 20. Addressing the question of whether forensic interviews of children should be admissible under *Crawford* and its progeny is not novel. In fact, the Ohio Supreme Court has provided significant guidance in how trial courts are to analyze the forensic interviews of children. In *State v. Arnold,* the Ohio Supreme Court held,

> . . . [S]tatements made to interviewers at child-advocacy centers that are made for medical diagnosis and treatment are nontestimonial and are admissible without offending the Confrontation Clause . . . We further hold that statements made to interviewers at child-advocacy centers that serve primarily a forensic or investigative purpose are testimonial and are inadmissible pursuant to the Confrontation Clause.

126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 2. Thus, trial courts are tasked to conduct a dual-purpose analysis with the goal of differentiating which statements within a forensic interview qualify as nontestimonial and which statements should be excluded under *Crawford.* In the instant case, particularly as it relates to Kh.J., the required analysis was left unconducted, and all of Kh.J.'s "pretty key pieces of information" reached the jury without any chance for cross-examination.

In *Arnold,* the Ohio Supreme Court analyzed a forensic interview and found many of the statements of the child "primarily served a forensic or investigative purpose." *Id.* Such statements included: "M.A.'s assertion that Arnold shut and locked the bedroom door before raping her; her descriptions of where her mother and brother were while she was in the bedroom with Arnold, of Arnold's boxer shorts, of him removing them, and of what Arnold's 'pee-pee' looked like; and her statement that Arnold removed her underwear." *Id.* According to the Ohio Supreme Court, "these statements likely were *not necessary for medical diagnosis or treatment.* Rather, they related primarily to the state's investigation. The [forensic interviewer] effectively acted *as an agent of the police* for the purpose of obtaining these statements." *Id.* (emphasis added).

Notably, the primary holding of the trial court as it relates to the *Crawford* objection was that Kh.J.'s age suggested that he would not have expected his statement to be used later for court, therefore his statement was not testimonial. As detailed *infra* in section C, the Ohio Supreme Court rejected this logic in *Siler,* holding ". . . [C]hildren's statements to police *or police agents* are

testimonial in circumstances that indicate that no ongoing emergency existed and that the primary purpose of the interrogation was to establish past events potentially related to later criminal prosecution. *Siler*, 876 N.E.2d at 543. Thus, in *Arnold*'s dual-purpose analysis, the forensic interviewer is sometimes an agent of the police (sometimes not). On occasion when the interviewer is acting as an agent of the police and questioning a child witness for investigative purposes, the age of the child is not dispositive—and arguably irrelevant—when analyzing whether a given statement is testimonial.

In *State v. Durdin*, the Tenth District applied the *Arnold* dual-purpose analysis in a case where the alleged victim provided a statement to a SANE nurse describing the use of gun during a sexual assault. 10th Dis. Franklin No. 14AP-249, 2014-Ohio-5759. The *Durdin* court found "the statement about the gun did not describe any activity, sexual or otherwise, that would cause a medical professional to be concerned about the possibility of injuries or diseases." *Id.* at ¶ 27.

In total, Kh.J.'s CARE house interview did not relate to purposes of medical diagnosis or treatment. First, he did not even describe a past event that related to the possibility of physical injuries or diseases to him. His statements involved his description of what he witnessed allegedly happen to his sister, a clear indication that the overall purpose of his statement was investigation. (Tr. of Proc., p. 690). Thus, from the outset, the state was not on solid footing arguing that the statements were for medical diagnosis and treatment of the declarant, Kh.J.. Further, Kh.J.'s statements were not to "enable police assistance for an ongoing emergency", and his statements were used extensively "to establish fact[s] . . . relevant to a later prosecution." *Id.* (*See* state's closing argument: "We also know it because [Kh.J.] saw it, very frankly, told Jennifer Kinsley during the forensic interview that Pappaw makes K.J.'s coco bleed." (Tr. of Proc., p. 888)).

When conducting the *Arnold* dual-purpose analysis, the constitutional problems with Kh.J.'s testimonial statements become clear. The forensic interviewer questions Kh.J. specifically about *where* in the house K.J. was allegedly touched by Curtiss. (Tr. of Proc., p. 694). Then, Kh.J. is asked if his "Nana" (Tanja Curtiss) was home during the time K.J. was touched. Kh.J. informs the forensic interviewer that his Nana was at work. (Tr. of Proc., p. 695). *Arnold* was unequivocal that

these *exact* types of statements are testimonial and not for medical diagnosis or treatment. The *Arnold* court squarely placed "descriptions of where her mother and brother were while she was [allegedly victimized]" into the category of testimonial statements. *Arnold*, 933 N.E.2d at 777.

The forensic interviewer also asked Kh.J. what he thinks should happen to his Pawpaw and he responded by saying "take us away". (Tr. of Proc., p. 696). This was a prejudicial question with a prejudicial answer, it was hearsay, and it was testimonial as there is no arguable way to classify such an answer as for medical purposes. In total, the playing of Kh.J.'s forensic interview violated Curtiss' Sixth Amendment right to confrontation.

Making matters worse, the state emphasized the forensic interview, and the clear testimonial statements within it, multiple times in closing, adding fuel to the prejudice created by the inadmissible evidence being played in open court for the jury. In closing, the state offered a succinct illustration of why the founding fathers set forth a right to confrontation: ". . . [E]ven though [Kh.J.] did not come to court. He has spoken to you with his interview." (Tr. of Proc., p. 914). The state did not stop there. The state explicitly relied upon Kh.J.'s statement, which was never confronted through cross-examination, to argue for Curtiss' guilt: "We also know it because [Kh.J] saw it." (*Id.* at 888).

The defense put on evidence that Curtiss' wife, Tanja Curtiss ("Nana") was around K.J. all the time and she did not witness anything untoward. To challenge this crucial part of the defense's case, the state relied on Kh.J.'s testimonial statement. In closing, the state emphasized, "Kh.J. also gave you a couple of other pretty key pieces of information. It happens while Nana is at work." (Tr. of Proc., p. 888). This evidence was admitted, then emphasized in closing, despite the Ohio Supreme Court's holding that statements about the location of others when sexual abuse allegedly occurs are categorically *not* for medical diagnosis and treatment. The state again focused the jury's attention on the testimonial statement of Kh.J. later in closing: "Who else told you that that's when this happened? [Kh.J.]. It happens when Nana's at work." (Tr. of Proc., p. 912).

In sum, this Court should find Kh.J.'s forensic interview, as a whole, to be a testimonial statement as the interview was focused on questions about what occurred to his sister. Necessarily,

the primary purpose of said questions was to establish facts for later prosecution and not for purposes of medical treatment of Kh.J. Moreover, this Court should conduct the *Arnold* dual-purpose analysis, which the trial court did not, and find that specific statements, such as where Nana was during the alleged abuse, were testimonial. Consequently, Curtiss' Sixth Amendment right to confrontation was violated. The prejudice for which was effectively conceded by the state by focusing on Kh.J.'s statement during closing and arguing he alone provided key pieces of evidence.

E. Fifth Assignment of Error: The trial court erred when it admitted K.J.'s forensic interview in violation of Curtiss' right to confront, due process, and a fair trial.

Like the CARE house forensic interview of Kh.J., the state also introduced K.J.'s CARE house statement. Because the reasoning for the admission of K.J.'s statement was slightly different, this issue is analyzed separately, but much of above cited law applies. At first, the state sought to introduce K.J.'s statement through Evid.R. 807. In fact, a hearing was held, which purportedly was an "807 hearing." However, in reviewing the transcripts of the hearing and trial, it appears the state abandoned the theory that K.J.'s statements were admissible under Evid.R. 807, and instead sought admission of the statements under the theory that the statements were made for purposes of medical diagnosis and treatment.

At the end of the "807 hearing," the trial court indicated that it "may have to write a written decision" on the admission of K.J.'s forensic interview. (Tr. of Proc., p. 116). Counsel did not find such an order in the record. During the trial, when the defense objected to the admission of both K.J. and Kh.J.'s forensic interviews, the trial court addressed the defense's *Crawford* and hearsay objections. (*Id.* at 637). The trial court overruled the *Crawford* objection stating, "there is no confrontation clause issue with K.J. [because] she testified [and] was subject to cross-examination." (*Id.*). Further, the trial court overruled the hearsay objection agreeing with the state's position that the statements were made for medical diagnosis and treatment. (*Id.*)

First and foremost, the trial court erred when finding that K.J. was subject to cross-examination. While K.J. did take the stand against Curtiss, what followed did not allow for Curtiss' counsel to meaningfully confront K.J.. More importantly, when considering the totality of K.J.'s time on the stand, no reasonable questions were possible regarding the allegations made during the

CARE house forensic interview. In the end, the *Crawford* objection to K.J.'s testimony requires an analysis into whether K.J. was competent to testify. If this Court finds that K.J. was not competent to testify, as will be argued *supra* in section F, then it follows that K.J. should not have been permitted to testify. As such, she was not subject to cross-examination. From there, the analysis of K.J.'s CARE house interview statements should proceed in the same manner as detailed above regarding Kh.J.'s statement (who did not testify).

Therefore, an *Arnold* dual-purpose analysis is required 1.) to complete the *Crawford* inquiry (assuming this Court finds K.J. incompetent), and 2.) to determine if the medical diagnosis hearsay exception was applicable regardless of K.J.'s competency determination and *Crawford*. K.J.'s limited time on the stand did not operate to make her prior statements during the forensic interview not hearsay in general, especially because she did not repeat the prior statements while on the stand. The only evidence for much of what the state alleged in closing came from out of court statements during K.J.'s forensic interview, which were offered—then emphasized—for the truth of the matter asserted. Simply put, they were hearsay and should have been excluded regardless of whether K.J. took the stand.

As described above, *Arnold* requires trial courts to differentiate statements made for purposes of medical diagnosis and treatment from statements made for investigative purposes. To that end, below are some examples of K.J.'s statements that were clearly not for medical diagnosis or treatment:

1. K.J. was asked to describe *where* in the house her coco was touched. (Tr. of Proc., p. 658.)

2. When asked if Curtiss ever showed K.J. parts of his body, K.J. replied "sometimes he do and sometimes he don't". (*Id.* at 668).

3. K.J. was asked to describe the color of Curtiss' private and what it looks like. (*Id.* at 669). K.J. answers and also does a communicative hand gesture, which itself is hearsay. (Nonverbal conduct of a person is a hearsay statement if it is intended by the person as an assertion, Evid.R. 801(A)(2) and is offered to prove the truth of the matter concerned. *United States v. Martinez*, 588 F.3d 301 (6th Cir. 2009); see also, *State v. Thompson*, 2nd Dist. Mongtomery No. 24432, 2012-Ohio-2416, ¶ 7.)

4. K.J. was asked what Curtiss said about whether someone else is permitted to touch her. K.J. replied that Curtiss said, "only me, not your mom." (*Id.* at 675).

5. K.J. was asked where Curtiss gets the "blue and white thing" and where it can be found in the house. (*Id.* at 679).

6. K.J. was asked what she thinks should happen to Pawpaw for touching her coco and she responded, "go to the police". (*Id.* at 685).

Critically, the Ohio Supreme Court has found a statement about "what [the accused]'s [genitalia] looked like" to be "not necessary for medical diagnosis and treatment," and instead, "related primarily to the state's investigation." *Arnold*, 933 N.E.2d at 777.

Fitting with the pattern whereby every error during the trial is then magnified during the state's closing argument, in closing, the state stated, "Do you remember [K.J.]'s description of seeing his private and her hand gesture? That it came up – it was in front of him and it came up. She is, in the only words she has, describing for you the fact that he had an erection. *That is how we know he did this for the purpose of sexual arousal.* He was sexually aroused. That's how we know." (Tr. of Proc., p. 879) (emphasis added). Later, the state again focused on K.J.'s out of court statements by again playing the recording during closing. As the recording played, the state asserted, "That right there is sexual gratification by this Defendant. What the little girl is showing you right there is her description of an erect penis to a five year – well, four-year old at the time, child. And that is her description to you as to what this man was doing to her." (*Id.* at 922).

The state was required to prove beyond a reasonable doubt that Curtiss' actions were for sexual gratification. To that end, the state focused on K.J.'s out of court statements to make its case. By allowing the genital description and hand gesture to be presented over objection, and then emphasized in closing, the court committed reversible error as the improper evidence was specifically used to support an element of the offense. In addition, the admission of the numerous other testimonial statements during the interview was error. The statements outlined above were hearsay (admitted over objection and then emphasized in closing) and violated Curtiss' Sixth Amendment's right to confrontation (assuming this Court finds K.J. was incompetent to testify).

F. Sixth Assignment of Error: The trial court erred when it found K.J. competent to testify in violation of Curtiss' right to confront, due process, and a fair trial.

In a pretrial motion, the state argued that K.J. was likely unavailable to testify because she was incompetent due to her age. (Notice of Intent to Introduce, Docket ID: 34929876). Nevertheless,

the trial court found her to be competent. This Court is likely familiar with the longstanding presumption of incompetence for a witness under ten, like K.J., which requires trial courts to conduct voir dire examinations. For the purposes of those examinations, trial courts are required to consider the *Frazier* factors:

> (1) the child's ability to receive accurate impressions of fact or to observe acts about which he or she will testify, (2) the child's ability to recollect those impressions or observations, (3) the child's ability to communicate what was observed, (4) the child's understanding of truth and falsity and (5) the child's appreciation of his or her responsibility to be truthful.

State v. Frazier, 61 Ohio St.3d 247, 251, 575 N.E.2d 193 (1991).

In *Schulte v. Schulte*, the Ohio Supreme Court affirmed the trial court's decision to exclude the testimony of a child witness who was allegedly abused. 71 Ohio St. 3d 41, 641 N.E.2d 719 (1994). The Ohio Supreme Court noted the child "showed a basic awareness of her familial surroundings by stating her name and age, as well as the names of her sister and parents." *Id.* at 44. However, the Court also noted problems when it came to the first *Frazier* factor, the child's ability to receive accurate impressions of fact or to observe acts about which he or she will testify. "...[S]he was very unclear with respect to the facts surrounding the alleged sexual abuse." *Id.* In conclusion, the Court found:

> A review of the hearing transcript as a whole, in light of the *Frazier* factors, supports the trial judge's finding that Elizabeth was not competent to testify. Her significant confusion regarding the most basic facts of the alleged incident in the bathtub supports a finding that she was unable to observe and recollect accurate impressions of the facts regarding the alleged abuse. Additionally, the fact that she was very distracted and uncertain during the hearing supports a finding that she was not capable of accurately communicating what she believed she observed. Finally, the last portion of the competency hearing cited above certainly calls into question her understanding of truth and falsity and her appreciation of her responsibility to be truthful. Consequently, we hold that the trial court did not abuse its discretion in finding Elizabeth incompetent to testify.

Id.

While a trial court is not required to make to make express findings on the considerations outlined in *Frazier*," a trial court is required to *consider* the *Frazier* factors.[12] *Id.* at 43. That did not

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[12] Evidence Rule 601(A) underwent a significant language change effective July 1, 2020. The prior version specifically addressed children under ten. The new version does not mention the age of a child. Nevertheless, a trial court should conduct a voir dire and consider the *Frazier* factors to

happen in this case. The first three *Frazier* factors all pertain to the circumstances about which the child will testify. Here, during the competency voir dire, the trial judge did not ask K.J. any questions about the alleged abuse. Therefore, the trial court could not have considered whether K.J. was able to "receive accurate impressions of fact or to observe acts about which he or she will testify," whether K.J. was able to "recollect those impressions or observations," or whether KJ was able to "communicate what was observed."

The trial court's questioning of K.J. regarding her siblings and teachers does not stand in the place of asking K.J. about the circumstances of the alleged abuse. In *Shulte*, the Ohio Supreme Court recognized the child had a basic awareness of her familial surroundings and was able to recite certain actual information about her life. Such a finding did not resolve the first three *Frazier* factors. Clearly, the ability to recite certain facts about a child's life and familiar circumstances is not a dispositive for a finding of competency.

To the extent the failure noted above does not resolve the issue, the trial court's questioning of K.J. regarding the fourth and fifth *Frazier* factors indicated that K.J. was incompetent. The fourth and fifth *Frazier* factors pertain to whether a child understands the nature of truth and falsity and whether that child appreciates his or her responsibility to be truthful. Although the transcript arguably shows that K.J. understood the difference between when something was true or not, she does not understand the necessity to tell the truth.

- The court: uh-huh. What happens when you lie. Like at home, if you lie, you know, about something Carter did, what would mom do?
- KJ: whoop you.

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determine pretrial if a young child is competent to testify. The case law surrounding determining whether any witness, regardless of age, is competent is consistent with the *Frazier* factors. *See, i.e., State v. Wildman,* 145 Ohio St. 379, 386, 61 N.E.2d 790, 794 (1945) ("A person who is able to correctly state matters which have come within his perception, with respect to the issues involved, and appreciates and understands the nature and obligation of an oath is a competent witness, notwithstanding some unsoundness of mind."); *State v. New Bey,* 8th Dist. Cuyahoga No. 109424, 2021-Ohio-1482, ¶ 61 ("...competency under Evid.R. 601(A) contemplates several characteristics: (1) the individual must have the ability to receive accurate impressions of fact; (2) the individual must be able to accurately recollect those impressions; and (3) the individual must be able to relate those impressions truthfully."). These competency considerations are consistent with the *Frazier* factors, thus, where a court is considering competency of a child witness, the court must still consider the *Frazier* factors.

- Court. Whoop you. And why would she whoop you, though?
- KJ: because. I don't know.

It is clear, in light of *Schulte*, the trial court abused its discretion when it determined K.J. was competent to testify after conducting a voir dire with the child.

Although it should have been clear from the voir dire that K.J. was incompetent to testify, it was certainly clear from her actual trial testimony. In determining whether the trial court abused its discretion, appellate courts often consider the trial testimony of the child. *See In re Joshua R.C.*, 6th Dist. Erie No. E-03-015, 2003-Ohio-6752 (finding that the trial court abused its discretion in allowing a child to testify after review of trial testimony). In addition, a child must have more than a "cursory understanding of the truth versus a lie;" the child must "appear to be able to provide consistent, accurate, impressions of what happened in the past." *State v. Conkright*, 6th Dist. Lucas No. L-06-1107, 2007-Ohio-5315, ¶ 45. In a situation where it appears the child cannot provide accurate impressions, and this is borne out by "inconsistent, contradictory, and brief testimony at trial," the trial court abuses its discretion in finding the child competent. *Id.*

K.J.'s trial testimony evidenced she was incompetent. Early on in her testimony, K.J. kept nodding rather than answer questions out loud. When the trial court directed her "can you tell me yes or no?," K.J. replied "Yes or no." (Tr. of Proc., p. 316). Unlike in the competency voir dire, K.J. was asked about the allegations at trial. When asked "Has anything every happened when you were with Teaven that hurt your body," she said "I don't know." (*Id.* at 322). When asked if Curtiss made her coco bleed, K.J. shook her head no. (*Id.* at 323).

Despite the denials, lack of memory, and inconsistency in her testimony, Curtiss was nevertheless prejudiced. Critically, had she been found incompetent, then the trial court's ruling regarding Curtiss's *Crawford* objection to the playing of the forensic interview should have been granted. The trial court overruled the *Crawford* objection because K.J. testified. Further, the state used the fact K.J. testified to show the jury "who *your victim* is" (Tr. of Proc., p. 925)(emphasis added). The fact that the jury was able to see, observe, and thus feel for K.J. made the state's inappropriate closing statements, as addressed more fully in section I all the more impactful.

G. **Seventh Assignment of Error: The state committed prosecutorial misconduct when it elicited false testimony from Melissa Lowe in violation of Curtiss' right to due process and a fair trial.**

The testimony of state witness Melissa Lowe was a hearsay free-for-all. The state did not call Lisa Brown as a witness where she would have had the opportunity to defend herself. Instead, the state painted a picture of her alleged incompetence through other witnesses. In other words, through hearsay. Basically, Ms. Lowe was put on the stand to trash her colleague, Ms. Brown, by reading from Ms. Brown's reports in the MCCS records. The fact that those reports were hearsay, and even contained significant hearsay within hearsay, never came up during the exercise that was Ms. Lowe's improper testimony.[13] The trial court should not have permitted Ms. Lowe to testify to cherry-picked portions of the MCCS records, but that is just the beginning of the issue at hand. At the end of Ms. Lowe's testimony, the issue metastasized into something far more nefarious.

At the end of Ms. Lowe's testimony, the state directed her to a specific Activity Report. The report was authored by Ms. Brown, and it described a visit by Ms. Brown to the children on July 31, 2018. This visit occurred shortly after Ms. Brown was made aware of the allegations by Erica Jones against Curtiss involving K.J.. Thus, the visit and the statements of all persons during the visit were a critical part of the equation in assessing Curtiss' guilt or innocence. The July 31, 2018, Activity Report was provided to Ms. Lowe on the stand, which added credibility to the idea that she was going to review it *live on the witness stand and report to the jury what it said.* The jury would never get to see the significant document, but alas, there was a witness on the stand to advise the jury exactly what the report stated. Did K.J. accuse Curtiss of sexual abuse or not? Any reasonable juror would be on the edge of their seat, and presumably recognizing the nature of recency bias, the prosecution saved the influential question for last.

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[13] Examples of questions directly asked by the state include, "Can you tell me, did those records indicate in any fashion whether Lisa Brown had conversation with the alleged perpetrator, Teaven Curtiss about those allegations? (Tr. of Proc., p. 619). Another example: Ms. Lowe was asked by the state if the MCCS records indicated that Lisa Brown was told to schedule a forensic interview. (Tr. of Proc., p. 622).

Referring to the July 31, 2018 Activity Report, the state asked, "So if there had been any question left in Lisa Brown's head as to what the allegation was, does Lisa Brown's note indicate that K.J. made a statement to her about what Teaven had done to her during that home visit?" (Tr. of Proc., p. 634). Ms. Lowe answered, "[K.J.] and [Kh.J] both did." (Tr. of Proc., p. 634). With the question and answer, the state's narrative was solidified; Ms. Brown was a villain in this story who ignored a little girl telling her that she was molested by her grandfather. No further questions.

However, the July 31, 2018 Activity Report *does not* contain any statement during the home visit by K.J. where she alleged Curtiss had abused her. (Sealed Court's Ex. II, p. 6). The only description of K.J.'s words or actions during the home visit included: 1.) she shouted to her mother "It's Lisa, can I let her in?" and 2.) she showed Ms. Brown a new toy she had gotten. That is it. Ms. Lowe's testimony that K.J. made an allegation against Curtiss during this specific and consequential home visit is demonstrably false. This was a lie on the stand—a lie that the prosecutor specifically directed the witness to provide to the jury (with a leading question no less). The prosecutor handed the witness a piece of paper and asked for the witness to tell the jury what it said (already problematic). The witness then told the jury that the report said something that it simply did not say. Ms. Lowe put words in Ms. Brown's report; she put words in K.J.'s mouth.

Alarmingly, both the prosecutor and Ms. Lowe were in possession of an email to Ms. Lowe where Ms. Brown *specifically described* the July 31, 2018 visit. (Sealed Court's Ex. II, p. 7). In the email, Ms. Brown made clear, "I interviewed the child and *she did not corroborate the mother's claim*, however the older brother was obviously coached by mother as when CW entered the door he blurted out that Pa Paw had touched his sister's 'Cew Cew.'" (*Id.*) (emphasis added). Yet, the jury was falsely told that K.J. did corroborate her mother's allegations on July 31, 2018, and the state did nothing to correct the false testimony that it had encouraged Ms. Lowe to provide.

It is "implicit in any concept of ordered liberty" that a conviction is tainted if the state uses false evidence or false testimony at a trial. *Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959). Indeed, it is well-established that a conviction obtained through the use of false evidence, known to

be such by representatives of the state, must fall under the Fourteenth Amendment. *Id.* Further, a conviction must also be overturned when the state allows false testimony to go uncorrected when it appears. *Id.* at 269-70 ("A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.").

According to the Ohio Supreme court, this type of claim "is in the nature of an allegation of prosecutorial misconduct, and the burden is on the defendant to show that "(1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false." *State v. Iacona*, 93 Ohio St.3d 83, 97 201-Ohio-1292, 752 N.E.2d 937. The *Napue* materiality standard requires this Court to reverse "if the false testimony could in any reasonable likelihood have affected the judgment of the jury." *Napue*, 360 U.S. at 272. This "reasonable likelihood" standard of materiality is a "low threshold" standard because false testimony cases involve not only "prosecutorial misconduct," but also "a corruption of the truth-seeking function of the trial process." *U.S. v. Barham*, 595 F.2d 231, 242 (5th Cir. 1979).[14]

Curtiss has met his burden in *Iacona*'s three-part test. First, the statement by Ms. Lowe was demonstrably false. The July 31, 2018, Activity Report did not say that K.J. corroborated her mother's story. Second, the prosecution clearly knew the testimony was false because 1.) the

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[14] Admittedly, the documents proving the falsity of Ms. Lowe's testimony were turned over to the defense as part of the limited MCCS records provided by the trial court to the parties. However, the fact that defense counsel was aware of the falsity is not dispositive of this issue. As stated by the Eight Circuit Court of Appeals, "The fact that defense counsel was also aware of the [documents showing the truth] but failed to correct the prosecutor's misrepresentation is of no consequence." *United States v. Foster*, 874 F.2d 491, 494 (8th Cir. 1988). As the Michigan Supreme Court has put it, "[t]he obligation to avoid presenting false or misleading testimony of its own witness begins and ends with the prosecution and is prudent in the unique *Napue* context because *Napue* requires the prosecution's knowledge of the false or misleading testimony of its own witnesses." *People v. Smith*, 870 N.W.2d 299, 306 n.7 (Mich. 2015).

Activity Report was possessed by the prosecutor during the testimony and the Activity Report in hand did not say that K.J. made such an allegation, and 2.) the prosecutor also had a copy of the October 19 email addressed to the witness, Ms. Lowe, where Ms. Brown set forth in detail that K.J. did not corroborate her mother's accusation. The remaining question is whether Curtiss has met the "low threshold" standard of materiality.

The false testimony served highly prejudicial purposes for the state. First, the false testimony was damaging to Curtiss' defense, which proposed that Jones was orchestrating the entire allegation around the time of July 31, 2018. If K.J. corroborated the allegation early on to someone she trusted—Ms. Brown—this fact cuts strongly against the defense theory that her mother was the impetus for the false allegations that occurred later during the forensic interview. Second, the state's narrative was that Ms. Brown was incompetent. Accordingly, Ms. Brown's incompetence and inaction were to blame for Ms. Jones' many inexplicable actions (such as permitting K.J. to continue to see Curtiss, lying about telling the doctor the accusation, etc.). When reviewing the actual MCCS records, it becomes clear that one of the reasons that Ms. Brown did not aggressively investigate Ms. Jones' allegation against Curtiss was *that K.J. did not corroborate the allegation.*

While the testimony that K.J. made a disclosure to Ms. Brown, on July 31, 2018, about Curtiss sexually assaulting her, solidified the overarching state narrative, that solidification was based on a lie. In total, the lie presents this Court with a reasonable likelihood that the jury's judgement was affected. Without the lie, Ms. Brown's actions and alleged inactions would have made more sense for the jury. In addition, the jury would not have been falsely advised that K.J. made an allegation against Curtiss immediately after the alleged abuse (when she was not seeing her mother that often). In truth, the allegation was much later after her mother was around her consistently with a far greater influence on the suggestible young child.

H. Eighth Assignment of Error: The trial court erred by barring Curtiss from introducing evidence material to his guilt in violation of Curtiss' right to due process and a fair trial.

"R.C. 2907.02(D) and 2907.05(E) govern the introduction of evidence pertaining to a victim's sexual history." *State v. King*, 12th Dist. Warren No. CA2018-04-047, 2019-Ohio-833, ¶¶ 22-23, *motion for delayed appeal granted*, 2019-Ohio-3731, 157 Ohio St. 3d 1403, 131 N.E.3d 68,

and *appeal not allowed,* 2020-Ohio-122, 157 Ohio St. 3d 1535, 137 N.E.3d 1201. "Although the statutes are identically worded, R.C. 2907.02(D) applies to rape prosecutions, and R.C. 2907.05(E) applies to gross sexual imposition prosecutions." *Id.* The statutes are commonly referred to as "Ohio's rape shield laws." *Id.*

The rape shield laws have limits. By its text, "The rape shield law prohibits any evidence of a victim's sexual history unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender. *In re Michael,* 119 Ohio App. 3d 112, 118–19, 694 N.E.2d 538, 542 (2nd Dist.1997). Further, rape shield laws may not be applied so as to "unduly infringe upon a defendant's constitutional rights." *Id.* "Thus, there may be circumstances in which a defendant's confrontation right requires that evidence of a complainant's prior sexual conduct be admitted, notwithstanding the fact that the evidence would otherwise be excluded by the rape shield law." *Id.*

Application of the rape shield laws is even more limited in cases, like this one, where the victim is a young child. In cases of young children, the fact the child has unexpected sexual knowledge for his or her age is used as evidence. Thus, evidence of prior sexual abuse "may be admissible for the defense to show the source for the child's sexual knowledge." *State v. King,* at ¶ 24. Such "evidence attempts to 'dissuade' a factfinder 'from concluding that a defendant must be guilty of sex offenses being prosecuted, given the extraordinary sexual knowledge of a child victim of tender years.'" (Citations omitted). *Id.* To determine whether the statute was unconstitutionally applied, a court must balance the state interests advanced by the rape shield law against the probative value of the excluded evidence. (Citation omitted). *In re Michael,* at 542–43.

> The rape shield law serves the legitimate state interests of (1) guarding the complainant's sexual privacy and protecting the complainant from undue harassment, (2) discouraging the tendency to try the complainant rather than the accused, (3) aiding crime prevention by encouraging the reporting of rape, and (4) aiding the truth-finding process by excluding evidence which is unduly prejudicial and only marginally probative.

Id. In assessing the probative value of the excluded evidence, the key is its relevancy as proof of the matters for which it is offered." *Id.* The standard of review is abuse of discretion.

In a Motion in Limine filed shortly before trial, the state asked the judge to "prohibit defense from introducing any evidence or testimony of other disclosures of sexual abuse by K.J." (Motion in Limine to Prohibit Evidence of Other Disclosures of Sexual Abuse, Docket ID: 35081553). The state sought to cast the allegation against J.C. as a "prior rape allegation" despite the fact it occurred in the same sentence in the same email as the allegation against Curtiss. The state did concede that J.C. was living in the Curtiss household because "he was convicted of a sex offense against another child" which "lends to believe that K.J.'s statements were not unfounded." (*Id.*). Curtiss' trial counsel objected to the state's motion, pointing out that the claim was not historical but rather contemporaneous. "Why did this child make the statement that someone other than Mr. Curtiss touched her? Why did the child's mother mention someone other than Mr. Curtiss? These are questions that are not historical and do not fall under the Rape Shield Act." (Defendant's Objection to State's Motion in Limine, Docket ID: 35081724). The trial court granted the state's motion. (Tr. of Proc., p. 297).

The Rape Shield laws were misapplied in this case in several ways. First, the sexual abuse claim against J.C. should not have been subject to rape shield laws at all and thus the trial court erred when it concluded otherwise. The rape shield laws are about sexual history. The alleged abuse by J.C. was not historical. In her email to Brown where Jones first told someone about K.J.'s alleged disclosure, Jones reported that K.J. had been abused by Curtiss *and* J.C. The abuses were contemporaneous.

Second to the extent that the claim of abuse by J.C. is subject to rape shield laws, it should nevertheless have been admitted. Evidence that K.J. and/or Jones named J.C. as an abuser in addition to Curtiss was relevant in two ways. First, either K.J. or Jones fabricated the allegation regarding J.C.—which is then relevant to whether the claim against Curtiss was also fabricated. Or, alternatively, if the allegation against J.C. was true, then there is reason to believe that the K.J.'s problematic behaviors resulted from sexual abuse perpetrated by J.C., not Curtiss. Evidence of the allegation against J.C. was not offered to harass K.J. or to make any insinuations about her sexual behaviors or history. In both instances, the evidence should have been excluded pursuant to the rape

shield laws. Thus, the other disclosures of sexual abuse were admissible consistent with *In re Michael.*

The trial court's error caused significant prejudice to Curtiss because it allowed the state to proceed on a grossly misleading set of facts. In her email, Jones stated: "She told me papaw and [J.C.] touched her there..." (State's Ex. 3). In stark contrast, according to the state "...The Defendant was named by name by the victim. There is no one else. This is not a case of whodunit." (Tr. of Proc., p. 876). Curtiss was prejudiced when his counsel was not able to explore the "whodunit" aspect of this case due to the court's improper ruling. Further, as state's witness Detective Joshua Spears well knew, as evidenced by a police report written by him, J.C. had been recently placed in Curtiss' home after being removed from a prior home for sexual abusing his five-year-old half-sister. Defense was unable to cross-examine Detective Spears regarding this report due to the Court's ruling. Further, defense was unable to explore the allegations with K.J. and Jones on cross examination.

The trial court's rape shield rulings also kept out another source of K.J.'s unusual sexual knowledge and problematic behaviors. According to a report written by Sarah Lipps, K.J.'s school therapist, Jones reported to Lipps that K.J. and L.H. has been abused at the foster home they were in right after their removal but prior to their placement at the Curtiss household. (Sealed Court's Ex. I, 10/12/18 SBHI Diagnostic Evaluation by Sarah Lipps). Again, we have a situation where either Jones is fabricating abuse claims against every person who had interim custody in an effort to get her kids back immediately or, this is a case of whodunit. One of the most problematic behaviors according to the professionals was K.J.'s bedwetting. Tanja Curtiss testified that the bedwetting occurred when K.J. was placed in her home. (Tr. of Proc., p. 823-24). This would be consistent with sexual abuse occurring at the foster home.

Again, the state capitalized on the trial court's errors. "That's not something a four-year old knows unless it has happened to them. She doesn't know that if you put something in a coco, it hurts. Except she does now. He taught her that. He showed her that." (Tr. of Proc., p. 881). The state claimed that K.J. had inappropriate sexual knowledge and sexual abuse by Curtiss was the only possible explanation. "She learned those behaviors from somewhere and he's sitting right over

there. What he has done to this child is going to affect all the people for the rest of her life, without question." (Tr. of Proc., p. 925). The state was able to make these misleading claims only because the allegations of abuse against J.C. and the prior foster home were excluded by the trial court.

The trial court erred by excluding the initial allegation against J.C. and the allegations against the other foster home. The excluded evidence went directly to the heart of the case, who, if anyone, abused K.J.. Were K.J.'s allegations a result of coaching rather than the truth? The outcome of the trial would have been different had these additional facts come to light. Again, the state took the error and ran with it in closing.

I. Ninth Assignment of Error: The state committed prosecutorial misconduct during its closing arguments in violation of Curtiss' right to due process and a fair trial.

The test for prosecutorial misconduct in closing arguments is whether remarks are improper, and, if so, whether they prejudicially affected substantial rights of the accused. *State v. Smith*, 14 Ohio St. 3d 13, 14, 470 N.E.2d 883 (1984). A reviewing court must "view the state's closing argument in its entirety to determine whether the allegedly improper remarks were prejudicial. *State v. Treesh*, 90 Ohio St. 3d 460, 466, 2001-Ohio-4. This court must consider all of the prosecutor's remarks, irrespective of whether the defense preserved an objection. *State v. Keenan*, 66 Ohio St.3d 402, 410, 613 N.E.2d 203 (1993) ("even though the defense waived objection to many remarks, those remarks still form part of the context in which we evaluate the effect on the jury of errors that were not waived."). An appellate court may invoke the plain error rule when (1) the prosecutor's comments denied the appellant a fair trial, (2) the circumstances in the instant case are exceptional, and (3) reversal of the judgment below is necessary to prevent a miscarriage of justice. (Citation omitted). *State v. McGee*, 4th Dist. Washington, No. 05CA60, 2007-Ohio-426, ¶ 15.

The extent of prosecutorial misconduct in the closing arguments in this case was egregious. If the evidence "arouses the jury's emotional sympathies, evokes a sense of horror, or appeals to an instinct to punish, the evidence may be unfairly prejudicial." *State v. Crotts*, 104 Ohio St. 3d 432, 2004-Ohio-6550, 820 N.E.2d 302, ¶ 5. The prosecutor did just that: "You're the only ones who can hold him responsible. *K.J. has done her part. We're asking you now to do yours.*" (Tr. of Proc., p.

925). The state continued, "Now, let me talk a little bit further about the credibility of [K.J.] because that's who you need to worry about. *That's who your victim is.* That's who's telling you what happened to her." (*Id.* at 924)." These comments are a naked attempt to appeal to an instinct to punish. These inflammatory statements were designed to induce the jury to feel that its job was to protect K.J. ("your victim") and to hold someone accountable for her circumstances. According to the state, the jury's job was not to assess the evidence against Curtiss against the reasonable doubt standard but rather, to protect a child.

Further, the prosecutors violated the Golden Rule – several times. The Golden Rule prohibits counsel from suggesting to jurors that they place themselves in a position of a party to the cause. *State v. Ross*, 2nd Dist. Montgomery No. 22958, 2010-Ohio-843, ¶ 126. Such statements are improper and can warrant reversal where they prejudicially affect the substantial rights of the defendant. Here, the prosecutors showed no respect for this rule:

> "There are reasons kids don't tell people. Fear. How about that. *Put yourself in [K.J.'s] shoes.* You have been taken from your mother. You've been place in foster care and you've been moved again. This is not a girl who has a sense of safety and stability in her life." (Tr. of Proc., p. 881).

The prosecutors asked the jury to abandon impartiality in an effort to protect a child. The state asked the jury to put themselves into the shoes of a five-year-old girl who has, undoubtedly, gone through trauma, and to imagine what her life was like and what she felt. Emphasizing the young age and vulnerability of K.J. ("your victim") was intended to elicit a visceral response from the jurors. These comments constitute an improper appeal to the emotion, passion, or prejudice of the jury through the use of inflammatory tactics. This encouraged the jury to depart from neutrality and decide the case on the basis of personal interest and bias, rather than on the evidence.

The state continued violating the Golden Rule when telling the jury to put themselves into the shoes of Jones, a young mother and domestic abuse survivor, and imagine how she felt when she had her children taken away after they witnessed her experiencing domestic abuse, also prejudicially affected Curtiss' rights: "*So put yourself in Erica's shoes.* Here she is, July 2018. She has worked for almost a year to get her kids back." (Tr. of Proc., p. 884). Any reasonable person who hears something like this will likely feel sympathy for that person. Therefore, when the state said

Fourteenth Amendments to the United States Constitution as well as Article I, § § 9 and 16 of the Ohio Constitution. Thus, Curtiss' convictions and sentence must be reversed.

J. Tenth Assignment of Error: The cumulative nature of the errors prejudiced Curtiss and deprived him of his right to due process and a fair trial.

Under the doctrine of cumulative error, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal." *State v. Garner*, 74 Ohio St. 3d 49, 64, 656 N.E.2d 623 (1995). "In order to find cumulative error, we must find: (1) that multiple errors were committed at trial, and (2) there is a reasonable probability that the outcome of the trial would have been different but for the combination of the separately harmless errors." (Citation omitted.) *State v. York*, 2018-Ohio-612, 107 N.E.3d 672, ¶ 29 (2nd Dist.).

Curtiss has identified numerous errors by the trial court. Assuming *arguendo*, this Court finds the errors individually do not require reversal, the cumulative effect of the errors made Curtiss' trial fundamentally unfair. The trial court's many errors cumulated such that they allowed the state to proceed on a concocted and misleading set of facts. Had the jury been made aware of the full set of relevant facts, the outcome of the trial would have been different.

VII. CONCLUSION

For the reasons stated above, Curtiss requests this Court reverse his convictions, and remand his case for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a foregoing was served on Heather Ketter via email at KetterH@mcohio.org on this 1st day of July, 2021 and via regular mail at:

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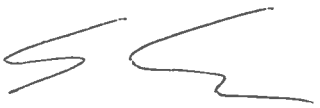

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