[Cite as *State v. Mims*, 2018-Ohio-5369.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2016-L-126**
- vs -	:	
DEONTE M. MIMS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 2016 CR 000248.

Judgment: Modified and affirmed as modified.

Charles E. Coulson, Lake County Prosecutor; *Karen A. Sheppert* and *Teri R. Daniel*, Assistant Prosecutors, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Deonte M. Mims, pro se, PID: A691-626, Trumbull Correctional Institution, P.O. Box 901, 5701 Burnett Road, Leavittsburg, OH 44430 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Deonte M. Mims, appeals from the November 3, 2016 judgment entry of sentence of the Lake County Court of Common Pleas.

{¶2} On March 11, 2016, appellant was indicted on one count of robbery, a second-degree felony in violation of R.C. 2911.02(A)(2). Appellant entered a plea of not guilty.

{¶3} A trial to the bench was held on October 3 through October 4, 2016. The following are facts summarized from the testimony provided at trial.

{¶4} Patrolman Jason Myers of the City of Mentor Police Department testified that on August 3, 2015, he was the first to respond to a robbery that had taken place at First National Bank in Mentor, Ohio. The bank teller who was robbed testified the robbery had taken place at around 11:00 a.m. that day. Patrolman Myers interviewed employees who were present during the robbery. The suspect was a black male, who witnesses indicated fled on foot. He was seen walking through the parking lot and onto a side street.

{¶5} Detective Steven Ondercin of the City of Mentor Police Department testified police were able to identify Cory Cooper, who was a suspect in two other robberies that occurred in Eastlake and Bay Village, as the suspect in the August 3, 2015 robbery.

{¶6} Detective Ondercin explained that on the afternoon of the robbery, police interviewed Lindsey Woodard, Mr. Cooper's girlfriend, at her residence. After speaking with Ms. Woodard, officers determined appellant may have been involved in the robbery with Mr. Cooper and focused their investigation on appellant.

{¶7} Appellant was initially interviewed by police on August 6, 2015. Detective Ondercin testified appellant denied involvement with the August 3, 2015 bank robbery. Appellant told investigators they would not see him on any surveillance video, that he had never been to Mentor, and that he had spent the day with his cousin "Dave." Appellant, however, provided little information about their activities and provided no contact information for "Dave." Appellant admitted he knew Mr. Cooper but denied any recent contact with him. During the interview, police questioned appellant about

whether he had a "blue vehicle," and he indicated his "BM" or "baby momma" had a small blue Hyundai Elantra. He refused to provide her contact information. Appellant informed police the car had been in an accident and was in a body shop, but he did not provide information about the body shop.

{¶8} On cross-examination of Detective Ondercin, defense counsel questioned him about why detectives were interested in a blue car. Detective Ondercin testified that when the police questioned Ms. Woodard, she stated she believed that on the morning of August 3, 2015, Mr. Cooper had left her house with his cousin who was driving a small blue car. She also provided police with a phone number, 216-309-****.

{¶9} Mr. Cooper surrendered to U.S. Marshals on August 13, 2015, and he was interviewed in Eastlake. On cross-examination, Detective Ondercin testified that during his interview, Mr. Cooper stated he originally told appellant he was going to open a savings account. Detective Ondercin testified that later in the interview, Mr. Cooper disclosed he had paid appellant $500.00 to drive him to the bank.

{¶10} Champayne Drake testified as a hostile witness. She explained that she and appellant have two children together and that she is pregnant with their third child. She indicated appellant went by the nickname, "Stocky." Ms. Drake testified that in August 2015, appellant was employed at the Marathon gas station on East 40th Street and Euclid Avenue. She affirmed the cellular phone appellant used was on her cellular plan with T-Mobile. She further affirmed the phone number 216-309-**** was a phone number associated with her cellular plan.

{¶11} Ms. Drake affirmed that in August 2015, she owned a blue Hyundai Elantra. When she initially got the car, it had a temporary tag on it and no front license plate. She further affirmed she obtained the permanent license plates for the car on

August 3, 2015, from the registrar in Cleveland Heights on South Taylor Road. Ms. Drake stated appellant was not with her when she got the license plates.

{¶12} Ms. Drake further testified that in an August 17, 2015 interview with police, she eventually directed them to the body shop where her blue Hyundai Elantra was being repaired. Ms. Drake affirmed she had dropped the car off at the shop on August 3, 2015.

{¶13} Special Agent Andrew Todd Earl with the Federal Bureau of Investigation, Cleveland Division, testified he was one of the people who interviewed Ms. Woodard on August 3, 2015. Special Agent Earl testified that during the interview police "received information that the morning of that robbery Mr. Cooper was picked up by a cousin, she identified the cousin as Stocky, that he was picked up in a blue four door car that morning and she provided a telephone number to us if I remember correctly (216) 309-[****]." He further explained that after police ran that cellular number through the local law enforcement database, they identified appellant as the individual who used that phone number. Officers further presented Ms. Woodard with a photograph of appellant, and she identified the person in the photograph as "Stocky."

{¶14} Special Agent Earl's testimony regarding the interview of appellant on August 6, 2015, substantially corroborated the testimony of Detective Ondercin.

{¶15} Jamie Papesh, a criminal intelligence analyst with the Ohio Bureau of Criminal Investigation, testified she created a cellular tower analysis for the City of Mentor Police Department from the files provided to police by T-Mobile for the phone number 216-309-****. Her analysis mapped a total of 199 calls for that number from August 3, 2015, at midnight to August 4, 2015, at midnight. Ms. Papesh explained the analysis, testifying to the times and tower locations for a number of the calls. Ms.

Papesh testified the cellular number was bouncing off a tower in Mentor, Ohio between 10:25 a.m. and 10:56 a.m. on August 3, 2015.

{¶16} Detective Patrick Radigan of the City of Mentor Police Department also testified about the August 6, 2015 interview of appellant. His testimony corroborated the testimony of Detective Ondercin and Special Agent Earl. Detective Radigan further testified that during the interview appellant provided police with his cellular number. Detective Radigan confirmed it was the same number Lindsey Woodard provided and the same number for which police requested records from T-Mobile.

{¶17} Detective Radigan further testified he was present when Ms. Drake directed police to the shop that was repairing her blue Hyundai Elantra. Detective Radigan explained that when they found the car, it contained a card addressed to appellant and one of his pay stubs from the "East 40 Street Marathon, Inc."

{¶18} Through Detective Radigan's testimony, the state also introduced a photograph taken from Officer Myer's dashcam while responding to the robbery. Detective Radigan testified police pulled dashcam videos subsequent to their interview with Mr. Cooper. He explained they reviewed the videos after they discovered a blue Hyundai Elantra was a possible vehicle involved in the robbery. The photograph taken from Officer Myer's dashcam depicted a blue Hyundai Elantra without a front license plate. The timestamp on the photograph was 10:53 a.m.

{¶19} Detective Radigan further testified that in Ohio, if the owner of a car has only a temporary registration, a paper placard would be displayed only on the rear of the vehicle; the vehicle would not have a front license plate.

{¶20} When the state presented Detective Radigan with a receipt from the Department of Public Safety Bureau of Motor Vehicles on South Taylor Road in

Cleveland Heights, Detective Radigan confirmed police had obtained the receipt from the Ohio BMV investigator. The address printed on the receipt was 2173 South Taylor Road, Cleveland Heights, Ohio 44118. It was dated August 3, 2015, at 4:28 p.m.

{¶21} Detective Radigan explained the police utilized a global mapping system to produce maps depicting the location of First National Bank in Mentor, Ohio; the Marathon gas station where appellant worked; Ms. Drake's apartment; the residence of Ms. Woodard and Mr. Cooper; and 2173 South Taylor Road in Cleveland Heights. When presented with the cellular tower analysis prepared by Ms. Papesh, Detective Radigan testified it indicated that the calls from the phone were bouncing off towers near the following locations: the Marathon gas station where appellant worked at 6:40 a.m.; Ms. Woodard's house from 9:34 a.m. until 9:51 a.m.; First National Bank in Mentor, Ohio from 10:25 a.m. until 10:56 a.m.; Ms. Woodard's house at about 1:20 p.m.; the BMV on South Taylor from 3:40 p.m. until 4:39 p.m.; Ms. Drake's apartment around 9:06 p.m.; and the Marathon gas station from 11:03 p.m. until 12:05 a.m.

{¶22} Investigators conducted a second interview with appellant on August 17, 2015. He again denied involvement with the robbery.

{¶23} At the close of the state's evidence, defense counsel moved for dismissal pursuant to Crim.R. 29. The motion was overruled.

{¶24} The judge returned a verdict of guilty. The matter proceeded to a sentencing hearing on October 31, 2016. The trial court stated it had considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the relevant sentencing factors pursuant to R.C. 2929.12(B) through (E). Appellant was sentenced to four years in prison with credit for 105 days. The trial court also ordered he pay

restitution in the amount of $3,838.00 to First National Bank in addition to costs. A sentencing entry was filed on November 3, 2016.

{¶25} Appellant noticed a timely appeal through counsel. The appeal was dismissed on April 10, 2017, for failure to prosecute.

{¶26} On July 7, 2017, appellant filed a pro se application for reopening, which this court granted. Appellant filed a pro se appellate brief on November 27, 2017, in which he raises three assignments of error.

{¶27} Appellant's first assignment of error states:

{¶28} "Appellant received ineffective assistance of counsel in violation of his rights under the Sixth and Fourteenth Amendment of the U.S. Constitution and Article I, Section § 16 of the Ohio Constitution."

{¶29} In order to prevail on an ineffective assistance of counsel claim, an appellant must demonstrate that trial counsel's performance fell "below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance." *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus (adopting the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984)). There is a general presumption that trial counsel's conduct is within the broad range of professional assistance, *id.* at 142, and debatable trial tactics do not generally constitute deficient performance. *State v. Phillips*, 74 Ohio St.3d 72, 85 (1995) (citation omitted); *see also State v. Schwartz*, 11th Dist. Portage No. 2013-P-0076, 2014-Ohio-4299, ¶20. In order to show prejudice, the appellant must demonstrate a reasonable probability that, but for counsel's error, the result of the trial would have been different. *Bradley*, *supra*, at paragraph three of the syllabus. If the defendant makes an insufficient

showing on one component of the inquiry, a court deciding an ineffective assistance of counsel claim does not need to address both components. *Id.* at 143.

{¶30} Appellant first argues trial counsel "demonstrated a profound lack of judgment" in his cross-examination of Detective Steven Ondercin. Appellant takes issue with the following testimony:

> **Defense Counsel:** Okay. And let's talk about this first meeting that you had with Mr. Mims. That was set up at downtown, correct?
>
> **Det. Ondercin:** Yes.
>
> * * *
>
> **Defense Counsel:** Did you, were you asking any of the questions?
>
> **Det. Ondercin:** I did ask a few questions specifically related to the car.
>
> **Defense Counsel:** And how did you know about this car?
>
> **Det. Ondercin:** Based on information from Lindsey Woodard.
>
> **Defense Counsel:** And that information was that, I mean how did it get attached to this investigation?
>
> **Det. Ondercin:** Lindsey had seen him leave in the morning in a small blue car, suspected it was - -
>
> **Defense Counsel:** Who left?
>
> **Det. Ondercin:** Cory. And she suspected that * * * he left with his cousin who had given him a haircut the day previously there.
>
> **Defense Counsel:** So at that point all you knew was that a blue car may have been involved?
>
> **Det. Ondercin:** She also provided us a phone number.
>
> * * *
>
> **Defense Counsel:** Now when did that interview with Mr. Cooper take place?

* * *

Defense Counsel: And in that interview didn't Mr. Cooper mention Mr. Mims; is that correct?

Det. Ondercin: Yes.

Defense Counsel: He does. And doesn't he in fact say that Mr. Mims had no idea he was robbing the bank?

* * *

Det. Ondercin: Mr. Cooper originally told Mr. Mims that he was going to open a savings account. Later in the interview he disclosed that he knew that he was going to rob the bank.

Defense Counsel: How does he know that?

Det. Ondercin: He was receiving payment for driving.

Defense Counsel: He doesn't say that he knew he just says that he gave payment; isn't that correct? Mr. Cooper never says that Mr. Mims knew? I'm asking.

Det. Ondercin: I don't remember exactly.

Defense Counsel: So he does at some point, at some point in the interview he does say that Mr. Mims had no knowledge of what was going on?

Det. Ondercin: Yes.

Defense Counsel: And to your knowledge Mr. Mims never went inside the bank?

Det. Ondercin: That's correct.

{¶31} Appellant maintains that Detective Ondercin's testimony regarding the statements of Lindsey Woodard and Cory Cooper was hearsay. Appellant argues the testimony opened the door for the state to further question Detective Ondercin about the blue Hyudai Elantra and the cellular phone on re-direct examination. Appellant further

contends neither Cory Cooper nor Lindsey Woodard testified at trial and could not be cross-examined regarding their statements to police.

{¶32} Trial counsel's decisions with regard to questioning on cross-examination fall within the realm of trial strategy. *See State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶101. Here, it is clear defense counsel may not have wanted Ms. Woodard or Mr. Cooper to testify. Further, the testimony at issue was about information that was already alluded to or was testified to later; therefore, questioning Detective Ondercin about that information may have been of benefit to appellant. Accordingly, we determine trial counsel's performance did not fall below an objective standard of reasonable representation.

{¶33} Appellant next argues that had Detective Ondercin's testimony about Ms. Woodard's and Mr. Cooper's statements "been withheld from trial as hearsay there is more than reasonable probability that the outcome of Mims's trial could have been different and that his Crim.R. 29 Motion for Acquittal would have been granted." However, even if counsel's performance was deficient, appellant did not suffer prejudice. A review of the record reveals the evidence of appellant's guilt was overwhelming.

{¶34} Further, this was a trial to the court, and there was no jury that was in danger of being misled. The Ohio Supreme Court has stated:

> Assuming, *arguendo,* that the testimony should not have been allowed, the other evidence in the case is still overwhelming. In addition, since this case was tried before a three-judge panel, it is presumed that the court considered only the relevant, material and competent evidence in arriving at its judgment, and nothing in the record compels a contrary conclusion. Consequently, any error is harmless beyond a reasonable doubt.

State v. Simko, 71 Ohio St.3d 483, 491 (1994) (internal citations omitted).

{¶35} We presume the trial judge in this case considered only the relevant and material evidence before reaching the verdict of guilty. Accordingly, we determine appellant has failed to establish he was prejudiced.

{¶36} Appellant's first assignment of error is without merit.

{¶37} Appellant's second assignment of error states:

{¶38} "The trial court erred in giving consideration to Appellant's juvenile record in imposing greater than the minimum sentence on his second degree conviction for robbery, in violation of his due process protections under the Fourteenth Amendment to the U.S. Constitution and Article I, Section § 16 of the Ohio Constitution."

{¶39} We generally review felony sentences under the standard of review set forth in R.C. 2953.08(G)(2), which states:

> The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.
>
> The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
>
> (b) That the sentence is otherwise contrary to law.

{¶40} "'A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the

sentencing factors in R.C. 2929.12.'" *State v. Wilson*, 11th Dist. Lake No. 2017-L-028, 2017-Ohio-7127, ¶18, quoting *State v. Price*, 8th Dist. Cuyahoga No. 104341, 2017-Ohio-533, ¶14. Appellate courts "'"may vacate or modify any sentence that is not clearly and convincingly contrary to law"'" only when the appellate court clearly and convincingly finds that the record does not support the sentence. *Id.*, quoting *Price*, supra, at ¶14, quoting *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, ¶23.

{¶41} Appellant does not contend his sentence falls outside the statutory range or that the trial court failed to consider R.C. 2929.11 and R.C. 2929.12. Rather, appellant argues the trial court was precluded from considering his juvenile record as a factor when imposing his sentence. In support, appellant cites to the Supreme Court of Ohio's decision in *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504.

{¶42} In *Hand*, the Supreme Court addressed the issue of "whether a statute that permits a previous juvenile adjudication to count as a prior conviction that enhances a later adult sentence by requiring a mandatory prison term violates due process[.]" *Id.* at ¶7.

{¶43} The Supreme Court held it was a violation of due process to treat a juvenile adjudication as the equivalent of an adult conviction for purposes of enhancing a penalty for a later crime because, unlike an adult conviction, "a juvenile adjudication is not established through a procedure that provides the right to a jury trial[.]" *Id.* at paragraph two of the syllabus. The Supreme Court further struck down R.C. 2901.08(A) as unconstitutional because the statute specifically provided that a prior "adjudication as a delinquent child or as a juvenile traffic offender is a conviction[.]" *Id.* at ¶9. The Supreme Court made it clear that "a juvenile adjudication is not a conviction of a crime and should not be treated as one." *Id.* at ¶38.

{¶44} Unlike in *Hand*, here, the trial court did not use appellant's juvenile adjudication to enhance the degree of his conviction or to include mandatory prison time. *See id.* at paragraph one of the syllabus. Further, R.C. 2929.12(D) specifically allows the sentencing court to consider "as factors indicating that the offender is likely to commit future crimes: * * * (2) The offender previously was adjudicated a delinquent child * * * or the offender has a history of criminal convictions." *See also State v. Carney*, 1st Dist. Hamilton No. C-160660, 2017-Ohio-8585, ¶19, quoting *State v. Bromagen*, 1st Dist. Hamilton No. C-120148, 2012-Ohio-5757, ¶9 ("'Clearly an offender's prior criminal conduct bears directly on a sentencing court's decision on the length of sentence to impose.'"). Moreover, from the record it is unclear what weight the trial court gave the juvenile adjudication when it imposed appellant's sentence. The trial court noted,

> [s]o six years ago you were 19 and you committed a robbery with a gun and went to prison. * * * [Y]ou had two offenses before that one as an adult; a menacing, an M-1 and a disorderly conduct as a juvenile. And then you're 19 you're committing a robbery with a gun and here you are after getting out of prison a little more than a year and a half later you're partaking in another robbery.

In imposing appellant's sentence, the trial court stated: "And I don't think you're a candidate for the minimum here * * * because on the last one you did you got 3 years, that didn't seem to have any affect so as a result a 4 year sentence is imposed."

{¶45} The trial court did not err in its application of the sentencing factors.

{¶46} Appellant's second assignment of error is without merit.

{¶47} Appellant's third assignment of error states:

{¶48} "The trial court abused its discretion in ordering Appellant to pay $3,838.00 in restitution to First National Bank, in violation of his due process protections

under the Fourteenth Amendment to the U.S. Constitution and Article I, Section § 16 of the Ohio Constitution."

{¶49} Appellant argues the trial court's order that appellant pay $3,838.00 in restitution was unreasonable because "the full amount of $3, 838.00 was already ordered to be paid back by the actual bank robber, Cory Cooper."

{¶50} We believe the standard of review set out in R.C. 2953.08(G)(2) applies to felony sentences that include restitution. *See State v. Thornton*, 1st Dist. Hamilton No. C-160501, 2017-Ohio-4037, ¶7-12; *see also State v. LaChance*, 11th Dist. Portage No. 2014-P-0026, 2015-Ohio-2609, ¶14-15. However, we note some districts review an appeal from an order of restitution for an abuse of discretion. *See*, *e.g.*, *State v. Nitsche*, 8th Dist. Cuyahoga No. 103174, 2016-Ohio-3170, ¶73; *State v. Spencer*, 5th Dist. Delaware No. 16 CAA 04 0019, 2017-Ohio-59, ¶44.

{¶51} R.C. 2929.18(A)(1) authorizes the trial court to order "[r]estitution by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss" as part of the sentence for a felony offense. R.C. 2929.18 does not prohibit apportionment of restitution among co-defendants. *State v. Becraft*, 2d Dist. Clark No. 2016-CA-9, 2017-Ohio-1464, ¶20 (citations omitted). However, where co-defendants act together in committing the same offense that causes economic harm to the victim, holding one defendant responsible for the full amount of restitution is permissible. *Id.* Nevertheless, because R.C. 2929.18 limits an order of restitution to the victim's economic loss suffered as a result of the offense, the victim is not entitled to double recovery from multiple offenders. *Id.* at ¶21.

{¶52} Here, the trial court ordered appellant "make restitution to the victim(s) of the defendant's criminal act, in the amount of Three Thousand Eight Hundred Thirty-

eight Dollars ($3,838.00), the victim's economic loss. * * * This order of restitution is a Judgment in favor of the victim, First National Bank, and against the defendant, Deonte M. Mims."

{¶53} On appeal, the state concedes "the intention of the trial court and the parties was certainly for any restitution to be jointly and severally ordered" and requests this court "modify Appellant's order of restitution to clearly [state] that it is joint and several with Appellant's co-defendant."

{¶54} Appellant's third assignment of error has merit to the extent discussed.

{¶55} Accordingly, we modify the trial court's order of restitution to order that appellant pay restitution to First National Bank in the amount of $3,838.00, jointly and severally with his co-defendant, Mr. Cooper.

{¶56} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas is modified and affirmed as modified.

DIANE V. GRENDELL, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

COLLEEN MARY O'TOOLE, J., dissents with a Dissenting Opinion.

{¶57} Finding merit in appellant's first assignment of error, I would reverse and remand. I believe trial counsel was ineffective.

{¶58} The testimony by Detectives Ondercik and Ratigan, and Special Agent Earl, regarding the statements made to them by Ms. Woodard and Mr. Cooper was pure

hearsay. Defense counsel actually invited Detective Ondercik to repeat what Ms. Woodard told investigators; he raised no objection to the testimony regarding what Mr. Cooper told investigators. It was clearly deficient performance by defense counsel to invite Detective Ondercik to testify regarding Ms. Woodard's information. Further, while I am aware that failure to object is not necessarily deficient performance that stricture only applies when the failure to object is based on trial tactics. I respectfully discern no trial tactics here. Ms. Woodard first informed investigators about the blue car, and gave them Mr. Mims' cell phone number; Mr. Cooper is the sole source of evidence that Mr. Mims was complicit to the robbery. These witnesses were available, and could have been compelled to testify. It is deficient performance for defense counsel to invite hearsay testimony regarding evidence vital to the state's case, and it is deficient performance to fail to object to hearsay involving such vital evidence.

{¶59} Mr. Mims was prejudiced by this deficient performance. Only this hearsay testimony connected him to a blue Elantra; only this hearsay testimony revealed his cell phone number; only this hearsay testimony connected him to the plan to rob the bank. Without this hearsay testimony, the state only had two pieces of competent evidence: (1) that the cell phone records indicate he was in the vicinity of Ms. Woodard's house before and after the robbery, and in the vicinity of the bank at the time of the robbery; and (2) the picture of a car similar to Ms. Drake's on Center Street shortly after the robbery. Regarding this second item, Elantras are not rare vehicles; and the fact that the car had no front plate does not necessarily prove it had a temporary tag, like Ms. Drake's.

{¶60} I respectfully dissent.