[Cite as *State v. Ellis*, 2015-Ohio-2120.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- DWIGHT ELLIS Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P. J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J. Case No. 2014 CA 00100 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 2013 CR 01774
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 1, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
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Wise, J.

{¶1} Appellant Dwight Ellis appeals his conviction and sentence entered in the Stark County Court of Common Pleas on one count of aggravated murder with a firearm specification, and three counts of felonious assault, each with connected firearm specifications.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On November 9, 2013, Appellant Dwight Ellis's birthday, Appellant had dinner with his wife and son, and then later went out with his girlfriend, Amanda DePasquale. (T. at 799-804). After patronizing a few bars, Appellant and Amanda ultimately ended up at The Whistle Stop, a bar in Canton, around 1:30 a.m. (T. at 741-744). When they arrived at the bar, Amanda's mother, Juanita De Pasquale, her friend Juleigh Van Almen, and Juleigh's daughters, Jessica Catterino and Vanessa Van Almen were also present with their boyfriends Tarrell Skinner and Bruce Torrance. Juanita, Juleigh and Ellis all know one another. (T. at 232, 235, 437).

{¶4} Angela Newman owns The Whistle Stop and was present that evening. She and Ellis have been good friends for 15 years. She has also been friends with the Van Almens for 25 years.

{¶5} Newman's brother-in-law, David Bowman was tending bar that night. (T. at 678, 680-682). Also present that night were Jeff Denison, a friend of Newman's, Mark Kurzinski, a member of the Whistle Stop pool league, Brian Cricks, and an unidentified friend of Cricks. (T. at 683).

{¶6} Kurzinski arrived at the bar around 1:00 to play pool. He does not drink. He recognized Juleigh, Juanita, Amanda, Newman, Denison and Bowman. Kurzinski left the bar just as Bowman announced last call. He didn't leave right away, but rather sat in the parking lot in his pick-up truck answering text messages. (T. at 484-486).

{¶7} When Bowman asked everyone to exit the bar, he noticed Amanda had kicked off her shoes, pushed Ellis and said "MF'er we will take this outside." Denison and Newman also noticed the disagreement between Amanda and Ellis. (T. at 459, 684, 722).

{¶8} Ellis, Amanda and Juanita were the last three to exit the bar. As they walked out, Ellis grabbed Amanda and pushed her against the wall, causing her to hit her head. Juanita yelled at him to "get his f-ing hands off [her] daughter." About the same time, Juleigh heard Juanita yell "he hit her." (T. at 239, 429).

{¶9} Outside, Ellis, Amanda, Skinner, Vanessa, Torrence, Juleigh, Juanita, Cricks and his friend gathered behind Kurzinski's truck. Kurzinski decided to wait until they moved instead of beeping the horn for them to move. (T. at 309-312, 487).

{¶10} Kurzinski heard Ellis yell at Skinner "Come on big boy, you want to fight, I'll fight you." Kurzinski watched as the group moved from behind his truck to the fence on one side of the parking lot. He saw Amanda shielding Ellis as Jessica tried to hit him. The fight then moved behind Kurzinski's truck again. He saw Ellis on the ground and saw Cricks kick Ellis in the head. Bowman and Denison came outside to investigate the shouting they heard from inside the bar and broke up the fight. Kurzinski then saw Bowman get in between Cricks and Ellis and saw Denison also intervene and push

Cricks and his buddy away from Ellis when it appeared they were going to "try to get some cheap shots in." (T. at 460, 487-488, 689, 723).

{¶11} Kurzinski watched as Ellis got to his feet, staggered and almost fell. He appeared disoriented. He watched as Ellis walked to his truck, "a good 25 feet away." No one followed Ellis. (T. at 465-466, 489, 492).

{¶12} As Ellis walked to his truck, he believed Skinner, rather than Cricks, was the person kicking him while he was on the ground. (T. at 836).

{¶13} At this time, the fight appeared to be over and Kurzinski saw people begin to go their separate ways. A moment later he thought someone threw a rock at his truck, but then realized it was a gunshot. That shot was followed by 3 more. Kurzinski tried to duck and hide. (T. at 489-490).

{¶14} Juleigh Van Almen heard Ellis yell "who's the bad mother fucker now?" Seconds later she heard a gunshot, followed shortly by more gunshots. She saw Skinner fall to the ground with the first shot. (T. at 246-247).

{¶15} On hearing the first gunshot, Jessica Catterino ran back to the door of the bar to try to get someone's attention inside. Bruce Torrence pulled her down behind a car when more shots followed and told her Skinner had been shot. She ran to where Skinner lay on the pavement and attempted to help him. (T. at 219, 225).

{¶16} At the same time, Juleigh ran to Ellis and pleaded "This is my family - what are you doing?" Ellis responded by running around her and shooting Skinner again. Juleigh again tried to push Ellis away from Skinner, but Ellis reached around her and shot Skinner one last time, in the head "as a deterrent" while Jessica was

attempting to help Skinner. He then walked back to his truck as Jessica and Juleigh administered CPR to Skinner. (T. at 226, 247-248, 829, 831).

{¶17} Ellis shot not only Skinner, but in firing into the crowd, he also shot Vanessa, Juanita and Amanda. Vanessa was shot through her left leg, Juanita was shot through the wrist and Amanda's shoulder was grazed by a bullet. (T. at 396, 420-421, 435).

{¶18} Canton police officers Rastetter, Gambs and Winn arrived to a chaotic scene, with people screaming and people lying in the parking lot who appeared to have been shot. One woman who had been doing CPR on a man lying on the pavement stood up and screamed that the shooter was in the red SUV in the parking lot. (T. at 362-363).

{¶19} Ellis's SUV was the last vehicle parked at the south end of the lot. Rastetter and Gambs approached the vehicle and ordered Ellis out. He complied and was taken into custody. The gun, a Springfield XP .40 caliber, was located on the passenger side floor board. The magazine in the weapon was empty. Rastetter noted that Ellis was calm and had no injuries. (T. at 365-367, 370).

{¶20} Rastetter transported Ellis to the Canton Police Department. On the way, Ellis stated "I just couldn't take it anymore." (T. at 373).

{¶21} At the scene, Newman advised officers that there was a camera system at the Whistle Stop and provided them with video footage from the relevant time period. (T. at 371- 372).

{¶22} Canton Police Detective Thomas Wasilewski arrived to process the scene. He recovered eight .40 caliber shell casings from various points in the parking lot. When he returned to the police station, he also took photos of Ellis. (T. at 513-515, 524-527).

{¶23} Detective Victor George interviewed Ellis. Ellis admitted to firing into the crowd and shooting Skinner. Ellis told George that he cannot tolerate young people. He admitted Skinner was unarmed. The interview was videotaped and transcribed.

{¶24} Dr. Frank Miller of the Stark County Coroner's office conducted Skinner's autopsy. Skinner had an abraded contusion on his left cheek and above his eye the skin was split. He had further abrasions on his left elbow, both knees and the fingers of his left hand. All these injuries were consistent with falling without bracing. (T. at 609-610, 622).

{¶25} Starting with the head and working his way down, Miller additionally identified 4 gunshot wounds. The first was to the head. There was an entrance wound above the right ear. The bullet traveled through Skinner's brain and came to rest on the left side, slightly further down from the entrance wound, breaking the bone and splitting the skin. The second bullet entered at the back right neck and exited under Skinner's chin. The third bullet entered Skinner's rear left chest, traveling through his right ventricle, stomach and diaphragm and came to rest under the skin on the left front chest. The last was a grazing wound to his right buttock. Miller ruled the cause of death multiple gunshot wounds and the manner as homicide. (T. at 610-625).

{¶26} As a result of the above events, Appellant Dwight Ellis was indicted on one count of aggravated murder (prior calculation and design) and three counts of felonious assault. Each count carried a gun specification.

{¶27} Appellant Ellis pled not guilty to the charges and the matter proceeded to jury trial.

{¶28} At trial, Appellant requested and was granted jury instructions for voluntary manslaughter and murder. He also requested but was denied a self-defense instruction.

{¶29} After hearing all the evidence and deliberating, the jury found Appellant guilty as charged.

{¶30} The trial court sentenced Appellant to life with parole eligibility after twenty (20) years, plus an additional three (3) years for the gun specification, on the count of aggravated murder. For each felonious assault count, the trial court sentenced Appellant to two (2) years plus an additional three (3) years for each gun specification. The trial court ordered each felonious assault and gun specification sentence to run consecutively to each other and consecutive to the life sentence for an aggregate total of 38 years to life. (T. at 1024-1025).

{¶31} Appellant now appeals, raising the following assignments of error for review:

ASSIGNMENTS OF ERROR

{¶32} "I. APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE BECAUSE THE STATE DID NOT PROVE THE REQUIRED ELEMENTS FOR AGGRAVATED MURDER BEYOND A REASONABLE DOUBT.

{¶33} "II. APPELLANT WAS IMPROPERLY SENTENCED WHEN THE TRIAL COURT SENTENCED HIM TO MULTIPLE CONSECUTIVE GUN SPECIFICATIONS ARISING FROM ONE CONTINUOUS COURSE OF CONDUCT."

I.

{¶34} Appellant, in his First Assignment of Error, argues that is convictions were against the manifest weight and sufficiency of the evidence. We disagree.

{¶35} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and "in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in evidence the jury 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997–Ohio–52, 678 N.E.2d 541, quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983).

{¶36} An appellate court's function when reviewing the sufficiency of the evidence is to determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks,* 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶37} In the case *sub judice*, Appellant is only challenging his conviction for aggravated murder, in violation of R.C. §2903.01(A), which provides:

{¶38} "(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy ..."

{¶39} Specifically, Appellant argues the state of Ohio failed to prove prior calculation and design.

{¶40} The Ohio Supreme Court has stated that it is not possible to formulate a bright-line test to distinguish between the presence or absence of prior calculation and design, but instead each case turns on the particular facts and evidence presented at trial. *State v. Taylor* (1997), 78 Ohio St.3d 15, 20.

{¶41} Although there is no bright-line rule for determining prior calculation and design, the Ohio Supreme Court has found the following factors pertinent to determining the existence of prior calculation and design: (1) Did the accused and victim know each other, and if so, was that relationship strained? (2) Did the accused give thought or preparation to choosing the murder weapon or murder site? and (3) Was the act drawn out or "an almost instantaneous eruption of events?" *Taylor* at 19, citing *State v. Jenkins,* 48 Ohio App.2d 99, 102, 355 N.E.2d 825 (8th Dist.1976). These factors should be weighed with the totality of the circumstances surrounding the murder. *Jenkins* at 102, 355 N.E.2d 825.

{¶42} In *Taylor v. Mitchell* (2003), 296 F.Supp.2d 784, the habeas corpus action considered by the U.S. Northern District of Ohio Federal Court regarding the conviction reviewed by the Ohio Supreme Court in *Taylor, supra*, the federal court summarized Ohio law regarding prior calculation and design as follows:

> In view of the understandable lack of a bright line rule governing determinations of whether the proof shows prior calculation and design, Ohio courts have consistently considered various factors in addition to those - the defendant's relationship with the victim, the thought given by the defendant to the means and place of the crime, and the timing of the pertinent events-recited in *Taylor,* 78 Ohio St.3d at 19, 676 N.E.2d 82, when determining whether the defendant engaged in prior calculation and design.

Among these other, frequently considered factors are:

- whether the defendant at any time expressed an intent to kill.

- there was a break or interruption in the encounter, giving time for reflection.

- whether the defendant displayed a weapon from the outset.

- whether the defendant retrieved a weapon during the encounter.

- the extent to which the defendant pursued the victim.

- the number of shots fired." *Id.* at 821–822, internal citations omitted.

{¶43} The Ohio Supreme Court has held, "Where evidence adduced at trial reveals the presence of sufficient time and opportunity for the planning of an act of homicide to constitute prior calculation, and the circumstances surrounding the homicide show a scheme designed to implement the calculated decision to kill, a finding by the trier of fact of prior calculation and design is justified." *State v. Cotton* (1978), 56 Ohio St.2d 8, 10 O.O.3d 4, 381 N.E.2d 190, paragraph three of the syllabus. Accord, *State v. Braden,* 98 Ohio St.3d 354, 785 N.E.2d 439, 2003–Ohio–325 at ¶ 61.

{¶44} Accordingly, to sustain appellant's aggravated murder conviction, the state had the burden of proving beyond a reasonable doubt that, under the facts and circumstances of this case, appellant had sufficient time and opportunity to plan Tarrell Skinner's death, and that, under the surrounding circumstances, appellant had a scheme designed to implement a calculated decision to kill Tarrell Skinner.

{¶45} "[P]rior calculation and design can be found even when the killer quickly conceived and executed the plan to kill within a few minutes." *State v. Coley,* 93 Ohio St.3d 253, 264, 2001–Ohio–1340, 754 N.E.2d 1129.

{¶46} In *State v. Conway,* 108 Ohio St.3d 214, 2006–Ohio–791, 842 N.E.2d 996, the Ohio Supreme Court held that one's actions could display a plan to kill. In *Conway,* upon hearing that his brother had been stabbed, Conway retrieved a gun from his car and began shooting at the alleged perpetrator. The Court held that "[a]lthough they took only a few minutes, Conway's actions went beyond a momentary impulse and show that he was determined to complete a specific course of action. Such facts show that he had adopted a plan to kill." *Id.* at ¶ 46, 842 N.E.2d 996.

{¶47} In the instant case, the evidence established that Appellant conceived a plan to kill and acted on that plan. Appellant made the following statements in his interview with Detectives George and Adams:

> ELLIS: .... And my big thing is I don't like young people. I don't fuck with em. You know? I like old people because they're mellow, you know? And they keep to themselves. So walkin my truck, guy gets in my face. You know, dude? I don't have no problem with you but I'm not a bitch. You know? I don't have no problem with you. Stay away from me. If you say something to me, we're gonna have a problem. You know? So we get to arguin and his buddy comes around behind me, you know, like dude uh, last thing I remember is I got hit from the back and I go down. And I was like, you know, is that all you got? Is that it? *You know and I'm gettin hit and I'm gettin hit and I was like dude I ... that's it. Keep it fuckin goin and we're gonna have a problem.*
>
> GEORGE: Now all this happened while you were at your truck?
>
> ELLIS: I wasn't even at my truck.
>
> GEORGE: Okay. Were you ...
>
> ELLIS: I was in the ... I was walkin out the door.
>
> GEORGE: Okay so you were out in that open parking area.
>
> ELLIS: Wh ... right in the ... on the .. .I parked maybe 20 feet from the door.
>
> GEORGE: I know. You had the red SUV.
>
> ELLIS: It's maroon. Yeah.

> GEORGE: Yeah. I know where that was.
>
> ELLIS: Right.
>
> GEORGE: From the door.
>
> ELLIS: 20 feet from the door. I, I don't have a problem with nobody. You know. Come in here. I mind my own business. I fuckin know the owner. She was my realtor. You know? No problem with nobody. You know. I'm tryin to .. .I'm tryin to get the fuck out of there.
>
> GEORGE. Okay.
>
> ELLIS: You know. But I keep gettin these, you know, people comin ... then somebody comes at me, hits me from behind. I go down and you know, people were swingin at me. It was a bunch. I, I hear female voices, I hear male voices. I hear everything. *Like alright. Keep it up. It, its gonna be fuckin' bad. You know?* And some way I make it to my feet. I make it to my truck. I get my gun. And I said I'm not fuckin' playin. And they just keep goin. That was .. .I mean short and fuckin' simple. And I started shootin .... (State's Exhibit 27 A at 5-6).

{¶48} We find that the jury could have found that the above statements that Appellant was planning to get his gun from his truck and create a "problem" while the fight was happening.

{¶49} Further, Appellant walked 20-25 feet to his vehicle to retrieve his gun. Appellant then turned and shot Skinner twice from that distance, walked back 20-25 feet and shot Skinner, who was now lying on the ground, two more times at close range, firing the final bullet into Skinner's head. Appellant could have gotten into his vehicle and driven away, but rather, he chose to reach into the door pocket, take out his firearm, locate Tarrell Skinner in the crowd, shoot twice from that distance, walk approximately 20 feet to where Skinner now lay on the pavement, and shoot him twice more.

{¶50} We do not find Appellant's actions constitute an "instantaneous eruption of events."

{¶51} If the victim is killed in a cold-blooded, execution-style manner, the killing bespeaks aforethought, and a jury may infer prior calculation and design. *See State v. Campbell* (2000), 90 Ohio St.3d 320, 330, 738 N.E.2d 1178; *State v. Palmer* (1997), 80 Ohio St.3d 543, 570, 687 N.E.2d 685; *State v. Taylor* (1997), 78 Ohio St.3d 15, 21, 676 N.E.2d 82; *State v. Mardis* (1999), 134 Ohio App.3d 6, 19, 729 N.E.2d 1272.

{¶52} Although appellant cross-examined the witnesses and argued that he did not set out with a plan to kill Tarrell Skinner, the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶53} A fundamental premise of our criminal trial system is that 'the *jury* is the lie detector.' *United States v. Barnard,* 490 F.2d 907, 912 (C.A.9 1973) (emphasis added), cert. denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). Determining the weight and credibility of witness testimony, therefore, has long been held to be the 'part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.' *Aetna Life Ins. Co. v. Ward,* 140 U.S. 76, 88, 11 S.Ct. 720, 724–725, 35 L.Ed. 371 (1891)". *United States v. Scheffer* (1997), 523 U.S. 303, 313, 118 S.Ct. 1261, 1266–1267.

{¶54} The jury was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the jury may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence". *State v. Craig* (Mar. 23, 2000), Franklin App. No. 99AP–739, citing *State v. Nivens* (May 28, 1996), Franklin App. No. 95APA09–1236 Indeed, the jurors need not

believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver,* Franklin App. No. 02AP–604, 2003–Ohio–958, at ¶21, citing *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548.; *State v. Burke,* Franklin App. No. 02AP1238, 2003–Ohio–2889, citing *State v. Caldwell* (1992), 79 Ohio App.3d 667, 607 N.E.2d 1096.

{¶55} After reviewing the evidence, we cannot say that this is one of the exceptional cases where the evidence weighs heavily against the convictions. The jury did not create a manifest injustice by concluding that Appellant was guilty of the aggravated murder of Tarrell Skinner with prior calculation and design. Appellant's conviction for the aggravated murder of Tarrell Skinner is supported by sufficient evidence, and not against the manifest weight of the evidence.

{¶56} Appellant's First Assignment of Error is overruled.

II.

{¶57} In his Second Assignment of Error, Appellant argues that the trial court erred in imposing multiple, consecutive sentences for the gun specifications in this case. We disagree.

{¶58} Appellant assigns as error the trial court's imposition of four, consecutive gun specifications.

{¶59} R.C. §2941.145(A), provides in pertinent part:

{¶60} "(A) Imposition of a three-year mandatory prison term upon an offender under division (B)(1)(a) of section 2929.14 of the Revised Code is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control

while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense."

{¶61} Appellant argues that his crimes were committed as a single transaction, and therefore consecutive sentences are prohibited by R.C. §2929.14(B)(1)(b).

{¶62} According to R.C. §2929.14(B)(1)(b), a court may not impose multiple firearm specifications for felonies that were committed as part of the same act or transaction *unless* R.C. 2929.14(B)(1)(g) applies. R.C. §2929.14(B)(1)(g) serves as an exception to the rule that multiple firearm specifications must be merged for purposes of sentencing when the predicate offenses were committed as a single criminal transaction, and provides:

{¶63} If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, *the sentencing court shall impose* on the offender the prison term specified under division (B)(1)(a) of this section *for each of the two most serious specifications of which the offender is convicted* or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. (Emphasis added.)

{¶64} In the instant case, the record is clear that Appellant was convicted of multiple felonies, to wit: one count of aggravated murder and three counts of felonious assault. The trial court was required by R.C. §2929.14(B)(1)(g) to sentence Appellant to

the two most serious firearm specifications that accompanied his felony convictions for aggravated murder and felonious assault.

{¶65} "[R]egardless of whether [a defendant's] crimes were a single transaction, when a defendant is sentenced to more than one felony, including [aggravated murder] and felonious assault, the sentencing court 'shall impose' the two most serious gun specifications." *State v. Isreal,* 12th Dist. Warren No. CA2011–11–115, 2012–Ohio–4876, ¶ 71. *See also State v. Ayers,* 12th Dist. Warren No. CA2011–11–123, 2013–Ohio–2641, ¶ 20–25; *State v. Cassano,* 8th Dist. Cuyahoga No. 97228, 2012–Ohio–4047, ¶ 32–34.

{¶66} We therefore find that the trial court did not err in concluding that the firearm specifications accompanying the aggravated murder count and one count of felonious assault were not subject to merger pursuant to R.C. §2929.14(B).

{¶67} With regard to the two firearm specifications attached to the two remaining felonious assault charges, R.C. §2929.14(B)(1)(g) provides that the trial court "in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications".

{¶68} However, the trial court is not permitted to impose more than one such term for multiple firearms specification convictions, if the underlying felonies were "committed as part of the same act or transaction." R.C. §2929.14(D)(1)(b).

{¶69} Appellant, in arguing that his crimes were committed as part of the same act or transaction, cites this Court to its decision in *State v. Reed*, 5th Dist. Tuscarawas App. 12AP080049, 2013-Ohio-3302, which followed *State v. Stevens,* in which the Second District Court of Appeals examined merger of firearm specifications in the

context of whether an offender committed multiple acts with a common purpose, when an offender has committed multiple offenses against multiple victims. 179 Ohio App.3d 97, 2008–Ohio–5775, 900 N.E.2d 1037 (2nd Dist.).

{¶70} In *Reed*, *supra*, the defendant fired a gun into a vehicle, injuring both of the occupants inside. Reed was charged with and convicted of two counts of attempted murder and two counts of felonious assault, with gun specifications on all four charges. Reed was sentenced to consecutive sentences of ten years for each attempted murder and three years for each gun specification. On appeal, this Court found appellant committed the offenses as part of the same act or transaction and therefore the trial court erred in imposing multiple sentences on the two firearm specifications.

{¶71} After the parties submitted their briefs in this case, the Ohio Supreme Court decided *State v. Ruff,* ––– Ohio St.3d –––, 2015–Ohio–995, ––– N.E.2d ––––. In *Ruff*, the Court held, "[t]wo or more offenses of dissimilar import exist within the meaning of R.C. §2941.25(B) when the defendant's conduct constitutes offenses involving separate victims *or* if the harm that results from each offense is separate and identifiable." *State v. Ruff,* paragraph two of the syllabus. Thus, in this case, the separate victims, Tarrell Skinner, Vanessa Van Almen, Juanita DePasquale and Amanda DePasquale, alone warrant the imposition of separate punishments.

{¶72} We therefore find the trial court did not err in ordering the four firearm specifications to run consecutively.

{¶73} Appellant's Second Assignment of Error is overruled.

{¶74} For the foregoing reasons, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, J. and

Farmer, J. concur

JWW/d 0525