# CAPTION: STATE V. SAMUEAL

**09-20-23**

APPEAL NO.: C-220641

TRIAL NO.: B-2005986

KEY WORDS: MURDER – WEAPONS UNDER DISABILITY – SUFFICIENCY OF THE EVIDENCE – WEIGHT OF THE EVIDENCE – JUROR MISCONDUCT – JURY INSTRUCTIONS – SENTENCING – CRIM.R. 36

SUMMARY:

The trial court did not commit plain error in failing to declare a mistrial after a juror commented generally on defendant’s decision not to testify where the court spoke with the juror and was satisfied that she had not formed an opinion about the case and could remain impartial.

The trial court did not commit plain error in failing to instruct the jury on the credibility of expert testimony where a general credibility instruction was given and there was no evidence that the jury’s verdict would have been any different but for the instruction.

Defendant’s convictions for murder with firearm specifications and having weapons under disability were supported by sufficient evidence and were not against the manifest weight of the evidence, despite no eyewitnesses actually seeing defendant shoot the victim, where the sole witness recognized defendant’s voice and saw his distinctive jacket, and where a friend of defendant testified that he drove defendant away from the scene after the shooting, saw him wearing the same clothing that the witness observed, and saw defendant with a firearm that night.

The trial court erred in including a sentence in the judgment entry that did not match the sentence announced in open court, but the error may be corrected by a nunc pro tunc entry.

JUDGMENT: AFFIRMED AND CAUSE REMANDED

JUDGES: OPINION by CROUSE, P.J.; WINKLER and KINSLEY, JJ., CONCUR.