[Cite as *State v. Graggs*, 2009-Ohio-5975.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 09AP-339
v.	:	(C.P.C. No. 08CR-02-1098)
John Q. Graggs,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 12, 2009

Ron O'Brien, Prosecuting Attorney, and *Richard A. Termuhlen*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, John Q. Graggs ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas entered upon a jury verdict finding appellant guilty of aggravated robbery, a first-degree felony in violation of R.C. 2911.01, kidnapping, a first-degree felony in violation of R.C. 2905.11, and aggravated murder, an unspecified felony in violation of R.C. 2903.01.

{¶2} The charges in this case arise out of the shooting death of Fred Brock, also known as "Food Stamp Freddie" ("Brock") that occurred on January 8, 2008. The following description of events surrounding Brock's death were adduced at trial.

{¶3} Marcus Jones ("Marcus") had been living at 3566 East Main Street, Apartment B-11, for about three months prior to Brock's death. According to Marcus, he and his friend Jessie Lanier ("Lanier") sold cocaine out of this apartment. Marcus testified they sold bricks of cocaine for $28,000 a piece. Brock was a friend of Lanier's that met Marcus about three days prior to the shooting. Essentially, Brock was hired to "stay in the house and pretty much make sure no one came in the house and took the money and the drugs." (Tr. 351.)

{¶4} On January 8, 2008, Marcus picked up his cousin, Dominic Jones ("Dominic"), and they went to a local high school basketball game. When Marcus left, Brock was on the couch watching television and Lanier was in the bathroom. While at the basketball game, Marcus saw Lanier arrive at the game alone. After the game, Marcus and Dominic went to the home of Marcus's father, Marvin Jones ("Marvin"), and began watching a movie. After being at Marvin's for approximately 15 minutes, Marcus got a telephone call from Lanier telling Marcus to come to the apartment. When Marcus and Dominic arrived at the apartment, Lanier was not there, but Lanier and a girl arrived about two minutes later. The three men entered the apartment where Brock was lying face down on the floor, handcuffed and shot.

{¶5} Marcus testified he never touched the body, but he was scared and he, Dominic, and Lanier began to clear the apartment of drug paraphernalia and things related to the drug operation, including scales and $17,000 in cash. After taking several

loads of items to Lanier's vehicle, Lanier left the complex. Marcus and Dominic then left the apartment and went to the Barnett Recreation Center where they called Marvin. According to Marvin, about 15 minutes had passed from when Marcus and Dominic left his house and made the call. Marvin told Marcus to call the police, and the three men proceeded to the apartment complex. Marvin went into the apartment with Dominic while Marcus called 911 from the hallway.

{¶6} Just as the dispatch was ending, Whitehall Police Officer Eric Hollyfield pulled into the parking lot of the apartment complex and observed a man waving "frantically" to him. (Tr. 35.) As Officer Hollyfield entered the building, two other men directed him to Apartment B-11. Upon entering the apartment, Officer Hollyfield observed the victim lying face down on the floor. There was blood on the victim's back, and his hands were handcuffed behind his back. After clearing the room, Officer Hollyfield checked for a pulse and called for medics. According to Officer Hollyfield, the entire apartment appeared to be in disarray and "methodically ransacked," as dresser drawers were pulled out and cushions were flipped. (Tr. 73.)

{¶7} Marcus testified that though the apartment had been neat when he left, "everything was just thrown around" when he returned from the basketball game. (Tr. 378.) Marcus also discovered that $35,000 in cash and Lanier's revolver were missing from the apartment. Though Marcus testified he initially lied to the police because he feared facing drug charges, he later told them the "whole truth" after he was arrested. (Tr. 388.) Marcus denied touching or shooting a gun on January 8, 2008; however, a gun shot residue test conducted at 10:33 p.m. that day revealed particles "highly indicative" of gunshot powder residue. Marcus denied knowing or ever meeting appellant.

{¶8} According to the testimony of the medical examiner, Brock had been shot three times, twice to the back and once to the head. Heather Ann Williams, a forensic scientist at the Ohio Bureau of Criminal Identification and Investigation ("BCI"), testified that the bullet recovered from Brock's thorax and the bullet recovered from the floor were fired from the same gun, but the bullet recovered from Brock's head was fired from a different gun.

{¶9} During evidence collection at the scene, the tip of a green latex glove was found under Brock's body. The glove was found to contain the DNA of appellant. A search of appellant's residence revealed a revolver and a green latex glove. The gun was determined not to be one that fired any of the bullets recovered from the scene, but the glove tip from the scene was determined to be similar to the glove found at appellant's residence.

{¶10} On January 9, 2008, at approximately 1:25 p.m., appellant paid cash for a pair of diamond earrings at Jared's jewelry store in the total amount of $480.35. At 8:19 p.m. that day, appellant returned to Jared's and paid $4,771.69 in cash for an anniversary ring. On January 14, 2008, appellant also made a lump-sum payment of $2,900 on the loan for his Cadillac. There was testimony that as of January 8, 2008, appellant was working full time and making $16.26 per hour, and he netted $443.73 on January 4, 2008 and $495.76 on January 11, 2008. Additionally, prior to making the lump-sum payment on the vehicle, appellant had made only erratic payments during 2007.

{¶11} During an interview with Whitehall Detective Steve Brown, appellant told Detective Brown that while he knew Brock, he had not seen him in ten years. Appellant also told Detective Brown that he was unfamiliar with the apartments where Brock was

killed and had never been there. Appellant denied even knowing where the apartments were located. According to phone records, appellant made three calls between 7:42 and 7:43 p.m. on January 8, 2008 in the vicinity of a cell tower one-half mile from Marcus's apartment. At approximately 8:50 p.m. that same day, appellant made two calls in the vicinity of a cell tower near his home. None of the calls appeared to have been made to Marcus, Dominic or Lanier.[1]

{¶12} On February 15, 2008, appellant was indicted for one count of aggravated robbery, one count of kidnapping, one count of murder, and two counts of aggravated murder, all with firearm specifications. A jury trial began on January 13, 2009. After the state presented its case, it dismissed the murder charge. On January 22, 2009, the jury found appellant guilty of all the remaining counts, but not guilty of the firearm specifications. On February 5, 2009, appellant filed a motion for a new trial pursuant to Crim.R. 33, and said motion was denied on February 23, 2009. A sentencing hearing was held on February 26, 2009, and an aggregate sentence of life imprisonment without parole was imposed.

{¶13} This appeal followed, and appellant brings the following three assignments of error for our review:

> I. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF AGGRAVATED MURDER, KIDNAPPING AND AGGRAVATED ROBBERY AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND

[1] There is no testimony from Lanier in this case as he was shot and killed in an unrelated incident prior to this trial.

> WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY FAILING TO PROPERLY INSTRUCT THE JURY AS TO ACOMMPLICE LIABILITY THEREBY DEPRIVING APPELLANT OF A FAIR TRIAL AS REQUIRED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION.
>
> III. APPELLANT'S TRIAL COUNSEL WERE INEFFECTIVE, THEREBY DENYING HIM HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS.

{¶14} In his first assignment of error, appellant challenges both the sufficiency and the weight of the evidence pertaining to his conviction. The Supreme Court of Ohio described the role of an appellate court presented with a sufficiency-of-the-evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is 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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed[.])

{¶15} Whether the evidence is legally sufficient is a question of law, not fact. *State v. Thompson*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In determining the sufficiency of the evidence, an appellate court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443

U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. Thus, a jury verdict will not be disturbed unless, after viewing the evidence in a light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4; *Jenks,* supra.

{¶16} A manifest-weight argument is evaluated under a different standard. "The weight of the evidence concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other." (Citation omitted.) *State v. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. In order for a court of appeals to reverse the judgment of a trial court on the basis that the verdict is against the manifest weight of the evidence, the appellate court must disagree with the fact finder's resolution of the conflicting testimony. *Thompkins* at 387. The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶17} A defendant is not entitled to a reversal on manifest-weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The determination of weight and credibility of the

evidence is for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230. The rationale is that the trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. Consequently, although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶22; *State v. Hairston*, 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶17.

{¶18} Though his assignment of error takes issue with the sufficiency and weight of the evidence, appellant challenges only the testimony of BCI employee Kelly Artis. Ms. Artis tested the DNA found in the tip of the latex glove found near Brock's body. The DNA was found to match that of appellant, and the chances of a random match between appellant's DNA and another human being were one in 77 quintillion. It is appellant's contention, however, that Ms. Artis's testimony is inadmissible and insufficient to sustain a conviction because the state failed to introduce a sufficient basis for Ms. Artis's testimony.

{¶19} Evid.R. 702 governs the admissibility of expert testimony. That rule provides that a witness may testify as an expert if all the following apply:

> (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

> (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:
>
> (1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
>
> (2) The design of the procedure, test, or experiment reliably implements the theory;
>
> (3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

{¶20} The admission of expert testimony is within the trial court's discretion. *State v. Williams* (1983), 4 Ohio St.3d 53, 58. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶21} Appellant does not contend Ms. Artis is not an expert or that her testimony related to matters beyond the knowledge or experience of lay persons. Rather, it is appellant's contention that Ms. Artis's testimony is not reliable because there is no evidence that the procedure she used reliably implemented the polymerase chain reaction ("PCR") theory upon which her results were based.

{¶22} Initially we note it is well-established that trial courts are not required to conduct a preliminary hearing under Evid.R. 104 to accept the scientific reliability of DNA evidence. *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, ¶80. Quoting its

holding from *State v. Pierce* (1992), 64 Ohio St.3d 490, 501, the *Adams* court stated, " 'questions regarding the reliability of DNA evidence in a given case go to the weight of the evidence rather than its admissibility.' " Id. at ¶80. "As we recognized in *Pierce* over 12 years ago, DNA evidence, premised on valid scientific principles, has been widely accepted as reliable and admissible evidence." Id. at ¶86, citing *Pierce* at 494. Moreover, absent a defense objection, a trial court is not obligated to conduct a hearing on the relevance and reliability of scientific evidence. *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, ¶139-41.

{¶23} Secondly, we note there was no objection to Ms. Artis's testimony, nor a request for a voir dire of Ms. Artis; therefore, all but plain error has been waived. *Davis* at ¶134; *State v. Beavers*, 10th Dist. No. 08AP-1070, 2009-Ohio-4214. Under Crim.R. 52(B), plain errors affecting substantial rights may be noticed by an appellate court even though they were not brought to the attention of the trial court. To constitute plain error, there must be: (1) an error, i.e., a deviation from a legal rule, (2) that is plain or obvious, and (3) that affected substantial rights, i.e., affected the outcome of the trial. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68. Even if an error satisfies these prongs, appellate courts are not required to correct the error. Appellate courts retain discretion to correct plain errors. Id.; *State v. Litreal*, 170 Ohio App.3d 670, 2006-Ohio-5416, ¶12. Courts are to notice plain error under Crim.R. 52(B) " 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Barnes* at 27, quoting *State v. Long* (1978), 53 Ohio St.2d 91, paragraph three of the syllabus.

{¶24} As previously mentioned, DNA evidence premised on valid scientific principles has been widely accepted as reliable and admissible evidence. *Adams*, supra

at ¶86 (PCR analysis " 'has received overwhelming acceptance in the scientific community and the courts' " quoting Smith and Gordon, 65 Cleve.St.L.Rev. at 2470.) Further, Ms. Artis testified as to her qualifications and extensive training. Ms. Artis explained she has a major in biology and a minor in chemistry. She received a year of in-house training at BCI where she began working in 2001. Ms. Artis testified she has performed DNA analysis "hundreds of times," has previously testified in court regarding DNA analysis and undergoes biannual proficiency tests. Ms. Artis further explained that when conducting DNA analysis, controls are run at every step of the process, and the results are subject to both peer and administrative review. Based on the foregoing, we cannot find that Ms. Artis's testimony is inadmissible or that the trial court committed error, plain or otherwise, in the admission of the same.

{¶25} Moreover, we cannot find there is insufficient evidence to support appellant's convictions. A piece of torn latex glove containing appellant's DNA was found under Brock's body despite appellant telling detectives he had never been to the apartment complex in question and had not seen Brock for ten years. Phone records established that calls from appellant's cell phone were made in the vicinity of Marcus's apartment near the time of the shooting. Additionally, Marcus's apartment was known for drug activity as he and Lanier had been running a drug business from there for several months. Marcus testified $35,000 in cash was missing from the apartment, and appellant made large cash purchases at a jewelry store the day after Brock's death. Appellant also made a large lump-sum payment on his vehicle loan despite making only erratic payments in the previous months.

{¶26} We find that based on the evidence, including the testimony of all the witnesses, viewed in a light most favorable to the prosecution, as is required, a reasonable trier of fact could have found beyond a reasonable doubt that appellant was indeed guilty of the crimes of which he was convicted. Therefore, we cannot conclude there is insufficient evidence to sustain appellant's convictions.

{¶27} Nor can we say the jury's verdict is against the manifest weight of the evidence. The basis for appellant's manifest-weight challenge is the alleged inadmissibility of Ms. Artis's testimony. However, we have already found there to be no error in this regard. The jury heard all the evidence, and as we previously stated, the weight to be given to the evidence and the credibility of the witnesses are issues primarily for the trier of fact. *DeHass*, supra. While this case turns on circumstantial evidence, the Supreme Court of Ohio has held that "[a] conviction can be sustained based on circumstantial evidence alone." *State v. Franklin* (1991), 62 Ohio St.3d 118, 124, citing *State v. Nicely* (1988), 39 Ohio St.3d 147, 154-55. In fact, circumstantial evidence may " ' "be more certain, satisfying and persuasive than direct evidence." ' " *State v. Ballew* (1996), 76 Ohio St.3d 244, 249, quoting *State v. Lott* (1990), 51 Ohio St.3d 160, 167, quoting *Michalic v. Cleveland Tankers, Inc*. (1960), 364 U.S. 325, 330, 81 S.Ct. 6, 11. Furthermore, a conviction is not against the manifest weight of the evidence simply because the trier of fact chose to believe the prosecution's witnesses. *State v. Rippey*, 10th Dist. No. 04AP-960, 2005-Ohio-2639. After careful review of the record in this case, we conclude there is nothing to indicate the jury clearly lost its way or that any miscarriage of justice resulted. Accordingly, we cannot say appellant's convictions are against the manifest weight of the evidence.

{¶28} Based on the foregoing, appellant's first assignment of error is overruled.

{¶29} In his second assignment of error, appellant contends the trial court failed to properly instruct the jury as to accomplice liability. Specifically, appellant contends the trial court failed to include the requisite mens rea when it instructed the jury that appellant could be convicted as an accomplice to the aggravated robbery, aggravated murder, and kidnapping counts. According to appellant, as instructed, the jury could have convicted appellant as an accomplice "by some word, act or deed" because the jury was not instructed that appellant had to have the same mental state as the principal offender for every element of each charge.

{¶30} No party objected to the jury instructions at trial; therefore, we undertake a plain-error analysis. *Long*, supra. " 'A jury charge must be considered as a whole and a reviewing court must determine whether the jury charge probably misled the jury in a matter materially affecting the complaining party's substantial rights.' " *State v. Horton*, 10th Dist. No. 03AP-665, 2005-Ohio-458, ¶50, quoting *Becker v. Lake Cty. Mem. Hosp. West* (1990), 53 Ohio St.3d 202, 208; see also *State v. Price* (1979), 60 Ohio St.2d 136, paragraph four of the syllabus, cert. denied (1980), 446 U.S. 943, 100 S.Ct. 2169; *State v. Hardy* (1971), 28 Ohio St.2d 89, 92.

{¶31} At the beginning of its instructions, the trial court told the jury that it "cannot embody all the law in any single part of these instructions. In considering one portion, you must consider it in the light of and in harmony with all the instructions." (Tr. 776.) The trial court further instructed that the state had the burden to prove beyond a reasonable doubt "that [appellant] committed the essential elements of the four crimes charged in this case." (Tr. 777.) At the conclusion of each charge, the trial court

reiterated that if the state did not prove beyond a reasonable doubt "any essential element of the offense," then the jury had to find appellant not guilty. The word "purposefully" was defined for the jury, and when defining "cause" under the aggravated murder instruction, the trial court stated, "[f]urther, the state must also prove beyond a reasonable doubt that [appellant] specifically intended to cause the death of another." (Tr. 792.) The trial court also instructed the jury that appellant's mere presence at the scene of the crime and guilty knowledge of the crimes are not enough to convict him of aiding and abetting.

{¶32} Based on our review, we find the jury instructions, when considered as a whole, probably did not mislead the jury concerning the requisite criminal intent required for a finding of complicity. See *Horton*, supra. Nor do we find that but for the alleged error in the instructions, the outcome of the trial would clearly have been otherwise because it is unknown whether the jury found appellant guilty on the basis of accomplice liability. There is enough evidence here to support a conviction as a principal offender; thus, we are unable to say the outcome of the trial could clearly have been otherwise had the trial court instructed in the manner now proposed by appellant. Accordingly, we cannot say the trial court's jury instructions constitute plain error. Therefore, appellant's second assignment of error is overruled.

{¶33} In his third assignment of error, appellant contends he was denied effective assistance of counsel. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052, 2064. In order to establish a

claim of ineffective assistance of counsel**,** a defendant must first demonstrate that his trial counsel's performance was so deficient that it was unreasonable under prevailing professional norms. Id. 466 U.S. at 687, 104 S.Ct. at 2064. The defendant must then establish "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. 466 U.S. at 694, 104 S.Ct. at 2068.

{¶34} According to *Strickland*:

> A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Id. 466 U.S. at 687, 104 S.Ct. at 2064.

{¶35} "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the

presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " Id. 466 U.S. at 689, 104 S.Ct. at 2065, quoting *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158, 164. A verdict adverse to a criminal defendant is not of itself indicative that he received ineffective assistance of trial counsel. *State v. Hester* (1976), 45 Ohio St.2d 71, 75.

{¶36} Appellant first contends his counsel were ineffective for failing to object to the testimony of Ms. Artis. We note that "[a] failure to object**,** in and of itself, does not rise to the level of ineffective assistance of counsel." *State v. Jackson*, 8th Dist. No. 86105, 2006-Ohio-174, ¶88. Ohio courts have recognized that objections tend to disrupt the flow of a trial and are often considered by the fact finder to be technical and bothersome; hence, competent counsel may reasonably hesitate to object. Id., citing Jacobs, Ohio Evidence (1989), at iii-iv; *State v. Campbell*, 69 Ohio St.3d 38, 53, 1994-Ohio-492. Moreover, we have already found the trial court did not err in admitting the challenged testimony; therefore, appellant's counsel were not ineffective for failing to object to the testimony. An attorney is not ineffective for failing to raise an objection which would have been denied. *State v. Gibson* (1980), 69 Ohio App.2d 91, 95. Because the admission of Ms. Artis's testimony was not error, his counsels' failure to object was not prejudicial. *State v. Draper*, 10th Dist. No. 02AP-1371, 2003-Ohio-3751, ¶29.

{¶37} Appellant next maintains his counsel were ineffective for failing to object to the trial court's jury instructions as it related to aiding and abetting. We have already found, however, that the jury instructions taken as a whole did not constitute plain error. For the same reasons, appellant cannot demonstrate that the result of the proceeding would have been different had counsel objected.

{¶38} Accordingly, appellant's third assignment of error is overruled.

{¶39} For the foregoing reasons, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.

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