

[Cite as *State v. Howard*, 2009-Ohio-2663.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-177
v.	:	(C.P.C. No. 06CR12-9525)
	:	
Timothy J. Howard,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 9, 2009

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Law Offices of Thomas F. Hayes, LLC, and *Thomas F. Hayes*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, P.J.

{¶1} Defendant-appellant, Timothy J. Howard ("appellant"), appeals his conviction for aggravated murder and tampering with evidence in the Franklin County Court of Common Pleas. For the following reasons, we affirm.

{¶2} On the morning of April 1, 2006, appellant called 911 and reported that his wife, Delilah, hanged herself in their home. When medics arrived, appellant escorted

them to the basement, where Delilah lay dead on her back. Across Delilah's chest was a portion of a pink bathrobe belt. Appellant was charged in Delilah's death and pleaded not guilty. A jury trial ensued, and plaintiff-appellee, the state of Ohio ("appellee"), presented the following evidence.

{¶3} According to medic Jacque Whittenberger, appellant said that Delilah "was hanging from the nail" and that she "used her bath robe to hang from the nail." (Vol. I Tr. 188.) Appellant identified this nail to Whittenberger; it was small and covered with cobwebs and dust.

{¶4} Franklin County Sheriff Deputy Samuel Byrd arrived at the scene shortly after the medics, and he testified as follows. Appellant said that he "saw his wife hanging on the nail." (Vol. I Tr. 208.) Appellant identified the nail "several times." (Vol. I Tr. 210.) The nail was thin and had "dust and cobwebs on it." (Vol. I Tr. 210.)

{¶5} Franklin County Sheriff Detective Don Murray interviewed appellant with Detective Debra Barnett on the day appellant found Delilah dead. Murray testified as follows. Appellant said that he found Delilah "hanging from a nail" with a robe belt. (Vol. II Tr. 163.) Appellant said that he cut the robe belt to get her down and did not untie any knots in the belt. Appellant gave a written statement, which made no reference to which nail or how many nails Delilah used for the hanging.

{¶6} Appellant revealed Delilah's death to her biological mother, Nancy Thomas, who testified that there was "no emotion" in appellant's voice—it "just was straight on." (Vol. II Tr. 267.) Whittenberger testified that appellant was "very blunt and

seemed very cold" when he told one of his daughters that Delilah was dead. (Vol. I Tr. 185.)

{¶7} Franklin County Sheriff Detective James Clark testified as follows. Clark and Detective Jack Burns interviewed appellant on April 11, 2006. The detectives asked which nail Delilah was hanging from, and appellant answered, "I have no idea, I didn't look up at anything at all to see how it was configured or anything like that." (Vol. II Tr. 247.)

{¶8} Law enforcement collected four undated suicide notes. Each note was separately addressed to appellant and their three children. Appellee's handwriting expert concluded that Delilah "probably" wrote the notes. (Vol. II Tr. 186-87.)

{¶9} Dr. Bonita Ward performed the autopsy on Delilah and testified as follows. Delilah did not die by hanging, but by a ligature strangulation homicide. Her eyes and face had congestion, which occurs when the blood vessels become engorged with blood. Delilah's eyes showed no signs of petechiae, which are caused when blood vessels burst due to the blood's inability to escape. Although common in ligature strangulations, petechiae are not a definitive finding. Delilah's lips were bluish-purple, indicating a lack of oxygen. Delilah weighed 135 pounds. A toxicology report revealed that Delilah had in her system therapeutic levels of a depression medication.

{¶10} Delilah's neck had a furrow, which is a mark left by a ligature. The furrow around Delilah's neck "went straight back" and nearly encircled her neck. In a typical hanging, the furrow appears as an "incomplete upside down V." (Vol. III Tr. 26.) In other words, the furrow casts upward and, depending on the location of the suspension

point in relation to the head, follows the jaw line behind the ears. Comparing photographs of Delilah's neck with photographs of confirmed hangings illustrated the difference between Delilah's furrow and the shape of the furrow in a typical hanging.

{¶11} At the back of Delilah's neck was a "jagged, abraded perpendicular line" connecting the two points of the furrow. (Vol. III Tr. 26.) This abrasion indicates that a piece of skin got caught in the ligature when someone twisted the ligature from behind. A loop-shaped mark underneath Delilah's chin indicates that in a struggle, Delilah ducked her chin and her skin got caught in the ligature. Delilah's neck had scratch marks consistent with her trying to grab at the ligature.

{¶12} Delilah had a fracture to the greater cornua, which are projections in the thyroid cartilage. The hyoid bone, which is near the base of the tongue, was not broken. Although the hyoid bone is typically broken in a strangulation case, it is not unusual for the hyoid bone to be intact in a strangulation case. The trial court did not allow Ward to testify whether scars on Delilah's arms were located in "a classic place for someone [who] would want to cut their wrists." (Vol. III Tr. 80.)

{¶13} Special Agent Gary Wilgus of the Ohio Bureau of Criminal Investigation collected evidence from appellant's home and testified as follows. Wilgus cut out portions of the floor joist that contained the nail that appellant identified to Byrd and Whittenberger. The nail was referred to at trial as the west nail. Wilgus thought that this nail was "questionable" because of the amount of debris on it and because of its apparent inability to sustain Delilah's weight. (Vol. II Tr. 47.) Concerned that appellant may have identified the wrong nail, Wilgus collected two other nails and surrounding

wood. In particular, Wilgus collected a "bigger and much more substantial" nail to the east of the one that appellant identified. (Vol. II Tr. 47.) This east nail also had dust and lint on it. Additionally, Wilgus collected a nail on the south beam because it had no visible lint or dust on it. Wilgus collected the bathrobe belt. The belt was in two pieces and showed no signs of having been in a knot. Wilgus did not observe any broken nails, injuries, cuts or scratches on Delilah's hands, and the parties stipulated that "no DNA profile foreign to Delilah Howard was detected on" her fingernails. (Vol. II Tr. 225.)

{¶14} A forensic scientist testified that fibers on the nails and wood that Wilgus collected did not match fibers from Delilah's robe belt. The scientist could not say that the robe belt never came into contact with the nails.

{¶15} John Mustard, a forensic engineer, tested for appellee the nails that Wilgus collected, and he testified as follows. The west and south nails were "finishing nail[s]," meaning that they were thin and designed to be invisible when nailed into the wood. (Vol. II Tr. 107.) The east nail was a "common nail," which is thicker and heavier than a finishing nail. (Vol. II Tr. 107.) When Mustard tested the west nail, it started to bend at 25 pounds, and at 45 pounds Mustard stopped the test because the nail was severely bending. The wood holding the nail splintered, and a gap formed between the nail and surrounding wood. At 124 pounds, the wood holding the east nail cracked and bulged, and a gap formed between the nail and surrounding wood. Thus, although the nail could support the weight, the wood surrounding the nail could not support the weight without showing signs of damage. The south nail bent at 46 pounds, and Mustard stopped the test on that nail. The wood holding the nail splintered, and a gap

formed between the nail and surrounding wood. Mustard concluded that none of the three nails had been subjected to Delilah's weight.

{¶16} Mustard tested the robe belt. Before the test, Mustard noticed that the belt showed no indication of having been tied into a knot. The belt was in two pieces, and Mustard tied the shorter piece into two knots in order to attach it to the testing device. Mustard applied 127 pounds to the belt and determined that it could support the weight. Mustard opined that the belt also could have supported 140 pounds. After the test was complete, the knots on the belt were tight and difficult to unfasten. Mustard was eventually able to untie one knot, but only with assistance. Afterward, the belt fabric was "compressed and crumpled and showed clear signs it had been a knot." (Vol. II Tr. 140.)

{¶17} Appellant's friend, Brenda Watson, testified as follows. In October 2005, appellant told Watson that he and Delilah had separated. In March 2006, appellant saw Watson at a party. After the party, Watson invited appellant to her apartment, and the two had sex. The next day, appellant had drinks with Watson and spent the night at her apartment. A few days later, appellant asked Watson if she wanted to go to Texas to watch a football game. Later that week, Watson left a message on appellant's cell phone asking to "hookup together." (Vol. III Tr. 100.) A day or two later, appellant called Watson and told her that Delilah heard the message. Appellant confessed that he and Delilah were still living together, albeit sleeping in separate bedrooms. Appellant and Watson agreed not to see each other anymore. A few days later, appellant went to Watson's apartment. Appellant apologized for not telling her that he was still living with

Delilah, but told her that Delilah was looking for her own place. Watson responded that they should not see each other anymore. Appellant agreed, although he reiterated his Texas trip invitation. A couple months after Delilah's death, appellant and Watson met for drinks, and appellant gave Watson a gift. Watson told appellant that she was dating another man.

{¶18} Counsel for appellee rested, and appellant raised a Crim.R. 29 acquittal motion. The trial court denied the motion. Appellant presented the following evidence.

{¶19} Appellant testified that, on the evening of March 31, 2006, he, Delilah, and their son Brandon went to the grocery store. They returned around 11:30 p.m. Delilah cooked dinner, and appellant fell asleep on the couch afterward. Later, Delilah woke appellant and said that she was going to bed. She told appellant that she loved him, and appellant responded that he loved her. Around 1:30 a.m., appellant joined Delilah in bed.

{¶20} The next morning, appellant was awakened by the house phone ringing. He did not answer the phone, but shortly thereafter his daughter Angela called his cell phone, which he did answer. Appellant noticed that Delilah was not in bed, and he searched the house for her. Appellant saw Delilah in the basement. Appellant initially thought Delilah was standing, but he discovered that she was hanging by a robe belt. When asked how Delilah was hanging, appellant testified, "[t]here was a point on one side, and then it was wrapped around her neck and then a point on the other side." (Vol. III Tr. 142.) Appellant did not untie any knots in the robe belt and did not know whether it was tied. Appellant used a utility knife to cut the left side of the belt.

Appellant unwrapped the other side of the belt and placed Delilah on a chair. Appellant called 911, and the medics arrived.

{¶21} Appellant admitted to dating Watson, and he admitted that he gave Watson perfume after Delilah died. Appellant said the perfume reminded him of Watson. Appellant said that he was "interested" in Watson, but did not want to have a relationship with her. (Vol. III Tr. 158.) Appellant admitted that, after Delilah died, he again asked Watson to go to Texas with him. Appellant admitted that his relationship with Delilah had deteriorated. Appellant said that Delilah took medication after she injured her back in 1999.

{¶22} On cross-examination, the prosecution challenged appellant's testimony that he found Delilah hanging on two nails. The prosecution questioned appellant about not mentioning the two nails in his written statement or during his interview with Clark and Burns. The prosecution confronted appellant with Byrd and Whittenberger's testimonies that he said that Delilah was hanging from one nail. Appellant denied telling Whittenberger or Byrd that he found Delilah hanging from a single nail.

{¶23} Appellant's daughter Angela testified as follows. Appellant argued with Delilah over the amount of medications she used. Angela read the suicide note to Brandon, and the note referred to Brandon making honor roll. Angela thought that Brandon made honor roll within two weeks before Delilah's death. In the last week of her life, Delilah appeared sad, drained, stressed, and upset. The trial court would not let Angela testify why Delilah was upset. On an unspecified date in 2004, Delilah went to the emergency room, and medical personnel collected drugs from her home.

Because the trial court would not allow it, the defense proffered that Angela "was going to testify as to a prior suicide attempt by her mother of a Neurontin overdose back in 2004." (Vol. V Tr. 69.)

{¶24} Appellant's daughter Amanda testified as follows. Although not sure, Amanda thought that Brandon made honor roll around Christmas. In March 2006, Delilah heard on appellant's cell phone a message from "Brenda" wanting to get together with appellant. (Vol. IV Tr. 150.) Although she did not exactly remember, Amanda thought that Delilah was upset about the message. Likewise, Delilah was not happy about herself. Amanda disapproved of Delilah's drug use, and, in Amanda's opinion, Delilah abused her pain medications. Amanda thought that the drugs affected Delilah's ability to care for Amanda's young son, and Delilah would be "out of it" after obtaining drugs from a friend. (Vol. IV Tr. 139.) At one point, Delilah wanted Amanda's pain medication. The trial court instructed the jury to disregard Amanda's testimony that Delilah wanted "to get high" from her medication. (Vol. IV Tr. 137.) The trial court sustained a prosecution objection when Amanda sought to testify that Delilah was unsuccessful in getting into Netcare shortly before her death.

{¶25} Attorney Larry Stephens was present during appellant's April 11, 2006 interview with detectives. Stephens testified as follows, after appellant waived his attorney-client privilege. Before the interview, appellant told Stephens that, when he discovered Delilah hanging, he cut down one side of the robe belt, but could not remember whether he cut down the second side of the belt. Stephens interpreted this to mean that there were possibly two points of suspension.

{¶26} A handwriting expert for the defense concluded that Delilah wrote the suicide notes. Dr. Dennis McGarry, an engineer, examined nails in appellant's basement and also testified as follows for the defense. McGarry tested a nail still in one of the floor joists in the basement. McGarry wrapped a robe belt around the nail and loaded 100 pounds, but the nail did not bend. At 150 pounds, the nail bent and created a gap between the nail and the surrounding wood. McGarry stated that he wrapped the robe belt around the nail in "loose fashion," meaning he did not "pull a tight knot." (Vol. V Tr. 40.) To attach the weight to the bottom of the belt, McGarry used a square knot. After the test, the belt showed signs of compression, but there was no "long-term physical damage" to the belt. (Vol. V Tr. 43.) McGarry testified that there was a bent common nail about 25 inches from where the south nail was cut out from the floor joist. McGarry did not test this nail. McGarry calculated that a common and finishing nail together could support 140 pounds under several, but not all, configurations.

{¶27} Forensic pathologist Dr. Suzanna Dana testified as follows. Delilah committed suicide by hanging. Dana observed no petechiae in Delilah's face and eyes. Petechiae are not as commonly seen in hangings as they are in ligature strangulations. Occasionally, petechiae do not occur in ligature strangulations. Dana described Delilah's lips and face as pale. In ligature strangulation, the lips, gums, and face will be congested and purple. Dana opined that the furrow in Delilah's neck angled upward in an "inverted V" and signified a hanging. (Vol. IV Tr. 44-45.) Dana initially said that the hyoid bone not being broken was unimportant, but she later said that it is rare for the hyoid bone or the thyroid cartilage to break in ligature strangulations. Dana found no

signs that Delilah was engaged in a struggle before her death. The trial court sustained the prosecution's objection when Dana sought to testify that if Delilah had scars on the front of the forearm, especially near the wrist, "it could indicate some previous cut." (Vol. IV Tr. 38.) On cross-examination, Dana confirmed that she based her opinion on looking at the autopsy report and photographs of Delilah's body. Dana said that she saw enough of Delilah's furrow to "get a good idea of what was going on." (Vol. IV Tr. 58.)

{¶28} The defense rested and renewed the Crim.R. 29 motion for acquittal. The trial court denied the motion. During closing arguments, the prosecution challenged appellant's testimony that he found Delilah hanging on two nails, and the prosecution suggested that this claim was a recent fabrication. The jury found appellant guilty of the charges, and the trial court sentenced him.

{¶29} Appellant appeals asserting the following assignments of error:

I. Prosecutorial Misconduct Deprived the Defendant of a Fair Trial and Due Process of Law in Violation of the Fourteenth Amendment to the U.S. Constitution.

II. The Trial Court Erred by Refusing to Allow the Defense to Offer Testimony Regarding Previous Suicide Attempts by The Decedent.

III. The Evidence was Insufficient to Support a Finding of Guilt.

IV. The Verdict was Against the Manifest Weight of the Evidence.

{¶30} In his first assignment of error, appellant argues that the prosecution committed misconduct. We disagree.

{¶31} The test for prosecutorial misconduct is, first, whether the conduct is improper and, second, whether the conduct prejudicially affected the substantial rights of the accused. *State v. White*, 82 Ohio St.3d 16, 22, 1998-Ohio-363; *Columbus v. Rano*, 10th Dist. No. 08AP-30, 2009-Ohio-578, ¶21. The prosecutor's conduct cannot be grounds for a new trial unless the conduct deprives the defendant of a fair trial. *State v. Keenan* (1993), 66 Ohio St.3d 402, 405. In considering prejudice, we must consider the following factors: (1) the nature of the conduct; (2) whether counsel objected; (3) whether the court gave corrective instructions; and (4) the strength of the evidence against the defendant. *State v. Tyler*, 10th Dist. No. 05AP-989, 2006-Ohio-6896, ¶20.

{¶32} According to a detective's summary of appellant's April 1, 2006 interview, appellant claimed that Delilah was suspended from "one or more nails." (Vol. IV Tr. 160.) Appellant asserts that the prosecution committed misconduct by (1) failing to provide this information to the jury, (2) presenting evidence that appellant initially claimed that Delilah was hanging from a single nail, (3) presenting evidence that Delilah could not have hung from a single nail, and (4) objecting when the defense asked Murray whether he would be surprised to know that a summary of the April 1, 2006 interview indicated that appellant referred to Delilah hanging from one or more nails.

{¶33} It is unclear from the record precisely when the defense received the detective's summary. The record suggests that the defense received the summary before trial. However, it was not until after the prosecution rested its case and well into appellant's case that the defense raised the misconduct claim. A party must

contemporaneously object to any possible error at trial to preserve that error for appeal. *State v. Lortz*, 9th Dist. No. 23762, 2008-Ohio-3108, ¶13. Untimely objections are reviewed using a plain-error analysis pursuant to Crim.R. 52(B). *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, ¶100, citing *State v. Johnson* (1989), 46 Ohio St.3d 96, 102. This plain error standard applies to prosecutorial misconduct claims. *State v. Williams*, 79 Ohio St.3d 1, 12, 1997-Ohio-407. Appellant's misconduct claim arose during the prosecution's case-in-chief. Therefore, appellant forfeited all but plain error by not raising the misconduct claim until after the prosecution rested its case.

{¶34} Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Plain error exists when there is error, the error is an obvious defect in the trial proceedings, and the error affects substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68. A court recognizes plain error with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice. *Id.* Prosecutorial misconduct allows for a reversal under the plain error standard if it is clear that the defendant would not have been convicted in the absence of the improper conduct. *State v. Saleh*, 10th Dist. No. 07AP-431, 2009-Ohio-1542, ¶68.

{¶35} Whittenberger, Byrd, and Murray observed appellant say that Delilah was hanging from a single nail. Therefore, these witnesses gave the prosecution grounds to present the single nail claim, and the prosecution did not commit misconduct in presenting the single nail claim to the jury. Nor did the prosecution commit misconduct in presenting its evidence that discredited the single nail claim.

{¶36} Additionally, under plain error, we find no misconduct from the prosecution not presenting the jury with the detective's summary. Appellant provides no case law requiring prosecutors to present exculpatory evidence in their case-in-chief. See also *United States v. Holt* (C.A.7, 2007), 486 F.3d 997, 1003 (rejecting the argument that the prosecution is required to present exculpatory evidence at trial). Moreover, the summary is ambiguous and does not clearly support appellant's defense that Delilah was hanging from two nails instead of one. Likewise, the validity of the summary is uncertain. The authorship is unclear, and the summary is unsigned and "not adopted by anybody." (Vol. IV Tr. 163.)

{¶37} Next, under plain error, we find no misconduct from the prosecution objecting when the defense questioned Murray about the summary of the April 1, 2006 interview. The objection was appropriate, given the uncertain validity of the summary and given that the defense sought a comment on inadmissible hearsay.

{¶38} Appellant argues that the prosecution committed misconduct when it challenged the credibility of his testimony that Delilah was hanging from two nails. Appellant is incorrect. Because the defense did not challenge the prosecution's good faith while cross-examining appellant, good faith is presumed. See *State v. Gillard* (1988), 40 Ohio St.3d 226, 231, abrogated on other grounds in *State v. McGuire*, 80 Ohio St.3d 390, 1997-Ohio-335; *State v. Lowe*, 164 Ohio App.3d 726, 2005-Ohio-6614, ¶11-12. Additionally, the record supports the prosecution's credibility challenge to appellant's testimony. Appellant gave conflicting accounts about how Delilah was hanging. On the date that Delilah was discovered dead, appellant told a medic and law

enforcement that Delilah was hanging from a single nail. Appellant's written statement made no reference to which nail or how many nails Delilah used. When asked during the interview with Burns and Clark which nail Delilah was hanging from, appellant answered, "I have no idea, I didn't look up at anything at all to see how it was configured or anything like that." (Vol. II Tr. 247.)

{¶39} Appellant argues that the prosecution committed misconduct by challenging his credibility during closing arguments. Appellant did not raise this issue during closing arguments and forfeited all but plain error. *Williams* at 12. Courts afford prosecutors latitude in making closing arguments. *State v. Benge*, 75 Ohio St.3d 136, 141, 1996-Ohio-227. Because of appellant's conflicting accounts on how he found Delilah hanging, the prosecution fairly argued that appellant's testimony was not credible. Therefore, under plain error, we discern no prosecutorial misconduct. Having also rejected appellant's other prosecutorial misconduct claims, we overrule appellant's first assignment of error.

{¶40} In his second assignment of error, appellant asserts that the trial court hindered his ability to present a defense when it (1) prohibited Amanda from testifying that Delilah attempted suicide in 2004, (2) limited testimony about Delilah's drug abuse, (3) disallowed testimony that Delilah was unsuccessful in getting into Netcare shortly before her death, and (4) disallowed testimony that scars on Delilah's forearms could signify previous cuts. "[T]he admission of evidence lies within the broad discretion of the trial court, and a reviewing court should not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice." *State v.*

Conway, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶62, citing *State v. Issa*, 93 Ohio St.3d 49, 64, 2001-Ohio-1290. See also Evid. R. 103(A) (stating that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected").

{¶41} We find no material prejudice here. When Angela testified that Delilah went to the emergency room in 2004, the jury could have inferred that this was due to a drug overdose because (1) Angela said that, after this incident, medical personnel collected drugs from her home, (2) Angela testified that appellant argued with Delilah over the amount of medications she used, and (3) Amanda indicated that Delilah abused drugs. The jury also had the means to infer, if it wanted to, that Delilah died from a suicidal hanging. Angela testified that Delilah appeared sad, drained, stressed, and upset the week before she died. Amanda said that Delilah was not happy about herself. Amanda indicated that, shortly before her death, Delilah was upset about hearing on appellant's cell phone Watson's date invitation, and appellant admitted that his relationship with Delilah deteriorated. Although the suicide notes were not dated, the jury could have concluded that Delilah wrote them near the date of her death. In one of the notes, Delilah mentioned Brandon making honor roll. At a minimum, according to Angela, Brandon made honor roll a few weeks prior to Delilah's death. At most, according to Amanda, Brandon made honor roll the Christmas before Delilah's death. Accordingly, we overrule appellant's second assignment of error.

{¶42} We address together appellant's third and fourth assignments of error. First, appellant argues that his convictions are based on insufficient evidence. We disagree.

{¶43} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶44} Appellant was convicted of aggravated murder pursuant to R.C. 2903.01(A), which states that "[n]o person shall purposely, and with prior calculation and design, cause the death of another." Ward testified that Delilah was strangled to death, and sufficient evidence allowed the jury to infer that appellant committed the homicide. Appellant's inconsistent statements about Delilah's death are reflective of a consciousness of guilt. See *State v. Henry*, 10th Dist. No. 04AP-1061, 2005-Ohio-3931,

¶41. Further implicating appellant in the homicide is the lack of emotion he portrayed when he revealed Delilah's death to Thomas and one of his daughters.

{¶45} Appellant's deteriorating marriage, his relationship with Watson, and his pursuit of her after Delilah's death show a possible motive to kill Delilah. "Motive, being the mental state that induces one to act, is relevant to most criminal trials in that it helps corroborate that certain acts took place because a person had a reason to act in a certain manner." *State v. Gonzalez*, 7th Dist. No. 06 MA 58, 2008-Ohio-2749, ¶71, citing *State v. Nichols* (1996), 116 Ohio App.3d 759, 764.

{¶46} Sufficient evidence proved that appellant acted purposely, given the vital nature of the neck area where the strangulation occurred. Sufficient evidence also proved that appellant acted with prior calculation and design. "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, paragraph three of the syllabus. Appellant had the opportunity to plan Delilah's homicide in the midst of his deteriorating marriage. The evidence of a ligature being placed around her neck and twisted indicates a crime committed with prior calculation and design. Accordingly, we conclude that sufficient evidence supports appellant's aggravated murder conviction.

{¶47} Appellant argues that his tampering with evidence conviction is based on insufficient evidence. R.C. 2921.12(A)(1) prohibits tampering with evidence and states

that "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall * * * [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation." The charge pertained to Delilah's body. A body constitutes a "thing" under R.C. 2921.12. *Saleh* at ¶90. Medics and police found Delilah lying on the ground with a belt across her chest. The jury could have reasonably inferred that appellant sought to hinder a criminal investigation by removing the ligature from Delilah's neck and staging her body to reflect a suicide. Accordingly, sufficient evidence supports appellant's tampering with evidence conviction.

{¶48} Next, appellant argues that his convictions are against the manifest weight of the evidence because he presented evidence that Delilah committed suicide. We disagree.

{¶49} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *Thompkins* at 387. We review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we determine " 'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of

fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶50} Appellant told Whittenberger and Byrd that Delilah was hanging from a single nail. The nail appellant identified was covered with dust and other debris, belying his claim that Delilah hanged herself from that nail. Mustard tested the nail, and it started to bend at 25 pounds and was severely bent after 45 pounds. The surrounding wood was not damaged before the test, but became damaged from the test weight. This test established that the 135-pound Delilah could not have hanged herself from this nail.

{¶51} The evidence also established that Delilah could not have hanged herself from the other two nails that Wilgus collected. The east nail was a common nail that could support more weight, but it was covered in dust and debris. The south nail had no visible dust on it, but could support no more than 46 pounds. The wood around the south and east nails was not damaged before the test, but became damaged from the test weight.

{¶52} Defense expert McGarry also corroborates appellee's theory that Delilah could not have hanged herself from a single nail. McGarry tested a common nail in appellant's basement. The nail could support 150 pounds. However, the wood around the nail was not damaged before the test, but became damaged from the test weight.

{¶53} Appellant's prior inconsistent statements allowed the jury to properly reject appellant's trial testimony that Delilah was hanging by two nails. Stephens made appellant's testimony no more credible. According to Stephens, appellant stated that he cut one side of the bathrobe belt, but could not remember whether he cut down the second side of the belt. Although Stephens interpreted this statement to mean that there were possibly two points of suspension, the statement itself was vague. In any event, appellant later gave a different account to Burns and Clark when he said that he did not know the nail from which Delilah was hanging.

{¶54} The condition of the robe belt also gave the jury reason to reject the suicide claim. Appellant admitted that he did not untie any knots in the belt, and Wilgus said that, when he collected the belt, it showed no signs of having been tied into any knots. It was within the province of the jury to conclude that Delilah could not have hung herself without tying the robe belt into any knots. The jury also reasonably rejected the suicide defense because a forensic scientist testified that fibers on the nails and wood that Wilgus collected did not match fibers from the belt.

{¶55} It was within the jury's province to believe Ward's testimony that Delilah died from a ligature strangulation and to reject Dana's opinion that Delilah committed suicide. Ward formed her opinions after examining Delilah's body. Dana did not examine Delilah's body, but had to rely on photographs and the autopsy report. Additionally, the furrow around Delilah's neck bears no resemblance to the photographs of furrows in confirmed hangings, and the jury could have reasonably concluded that the furrow on Delilah's neck did not form the "inverted V" reflective of a typical hanging.

{¶56} The jury could have found the absence of any petechiae insignificant, given that both Ward and Dana testified that petechiae occasionally do not appear in ligature strangulations. The jury could have placed no significance on Delilah's hyoid bone being unbroken, given Ward's testimony that it is not unusual for the hyoid bone to be intact in a strangulation case and Dana's initial statement that this fact was unimportant.

{¶57} The evidence of Delilah's mental state does not undermine the jury's conclusions. Although Delilah had a history of abusing her medications, the toxicology report showed only therapeutic levels of depression medication in her system when she died. The jury also could have discounted the suicide notes because they were undated and other sufficient evidence established that Delilah did not hang herself. The jury also could have reasonably concluded that appellant exploited Delilah's fragile mental state to stage the homicide as a suicide.

{¶58} In the final analysis, the trier of fact is in the best position to determine witness credibility. *State v. Carson*, 10th Dist. No. 05AP-13, 2006-Ohio-2440, ¶15. The trial court accepted evidence that appellant killed Delilah through ligature strangulation, and appellant has not demonstrated our need to disturb the court's conclusions. See *Brown* at ¶10. Accordingly, we hold that appellant's aggravated murder conviction is not against the manifest weight of the evidence. We also find that it was reasonable for the jury to have determined that appellant, seeking to hinder a criminal investigation, staged Delilah's body to reflect a suicide. Therefore, we also hold that appellant's tampering

with evidence conviction is not against the manifest weight of the evidence. We overrule appellant's third and fourth assignments of error.

{¶59} In summary, we overrule appellant's four assignments of error. Consequently, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.
