[Cite as *State v. Conley*, 2010-Ohio-5715.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-227 (C.P.C. No. 09CR03-1860)
Rodney Conley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 23, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Keith L. O'Korn, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Rodney Conley ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas convicting him on charges of aggravated murder, aggravated robbery, kidnapping, tampering with evidence, and having a weapon while under a disability, arising from the death of Jesse Lanier ("Lanier"). For the reasons that follow, we affirm.

{¶2} The evidence at trial established that on August 15, 2008, Charles Rupe ("Rupe") and Anthony Bridges ("Bridges") were working at a business called Performance Paving located on Brentnell Avenue. The two saw a large black SUV pull in to the company's parking lot. The driver and a passenger sitting in the front passenger's seat appeared to be fighting. The driver, subsequently identified as appellant, got out of the driver's side, went around to the passenger side and pulled the passenger, subsequently identified as Lanier, out of the vehicle and threw him to the ground. Bridges testified that appellant said something to the effect of, "Don't make me do this again." (Tr. 102.) Appellant then got back into the vehicle and drove away.

{¶3} Bridges and Rupe approached Lanier and saw that he had been shot multiple times. Rupe testified that Lanier wanted to call his mother to tell her that he had been shot by his aunt's boyfriend. Bridges corroborated Rupe's testimony, and further testified that Lanier said the name of the person that shot him was Rodney. After calling 911 to request medical assistance, Bridges allowed Lanier to use Bridges' cell phone to call Lanier's mother and girlfriend. Bridges testified that Lanier left a voicemail message in which he stated that "Rodney" had shot him. Rupe and Bridges each testified that during this time, Lanier appeared to be very upset and in a great deal of pain.

{¶4} Columbus paramedic John P. Letki ("Letki") testified that he responded to the scene in response to the 911 call. Letki testified that it appeared Lanier had been shot three times. Letki further testified that while en route to the hospital, Lanier's pulse and respiration increased, while his blood pressure decreased, which was the result of significant blood loss, and that Lanier appeared to be in shock. Letki also testified that

while in the ambulance, Lanier repeatedly expressed surprise at having been shot, and stated that he had been shot by the boyfriend of a relative of his.

{¶5} Lanier's girlfriend, Shannon Johnson ("Johnson"), testified that on August 15, 2008, appellant and Lanier were returning from the Argosy Casino in Indiana, where they had gone to gamble. Johnson testified that she received a voicemail message on her cell phone on August 15, 2008, a recording of which was played at trial. In the message, a male voice Johnson identified as Lanier's stated, "Babe, Rodney just shot me three, four times, babe. I'm on Brentnell. I might not make it." (Tr. 140.)

{¶6} The trial court also heard evidence from Jesse Price ("Price"), Lanier's father. Price testified that on August 15, 2008, he was employed as an operating room assistant at Grant Medical Center. As he was preparing to complete his shift on that date, Price received a call on his cell phone informing him that Lanier had been shot and was being brought to Grant. Price went to the Level I trauma area of the hospital, where he saw Lanier being treated. Price spoke to Lanier, and Lanier informed him that, "Rodney shot me, robbed me, left me for dead." (Tr. 158.) Price further testified that after that, Lanier was unable to talk further because he was placed on life support, and that on August 19, 2008, Lanier died as a result of the injuries he had suffered in the shooting.

{¶7} Shortly after the August 15, 2008 shooting, Columbus police responded to a report of a suspicious vehicle behind a house on Willamont Avenue, not far from the scene of the shooting. The vehicle was a black SUV with visible blood stains on the passenger side of the interior. In a dumpster next to where the SUV was parked, officers found a handgun. The SUV was found to belong to appellant. Subsequent

testing established that DNA at the scene was a mixture of appellant's and Lanier's. Appellant's fingerprints were found on the vehicle. Ballistics testing established that bullets and bullet fragments recovered from the vehicle and from Lanier's body matched the gun recovered from the dumpster.

{¶8} The trial court also heard testimony from Manuel Becker ("Becker"), an employee of the Indiana Gaming Commission working at the Argosy/Hollywood Casino. Becker testified that casino records showed that on August 13, 2008, Lanier bought $8,200 worth of chips from the casino, and cashed in $14,000 worth of chips. The casino records further showed that on August 14, 2008, Lanier cashed in another $7,000 worth of chips, including $3,000 cashed in immediately before Lanier must have left the casino to return to Columbus.

{¶9} Franklin County Coroner Dr. Jan Gorniak testified regarding her review of the autopsy that had been performed by an assistant coroner who was no longer with the office. Dr. Gorniak testified that Lanier had been shot twice in the chest and once in the left arm. The shot to Lanier's left arm had broken the humerus, and the shots to the chest had severed Lanier's spinal cord and damaged his heart, lungs, stomach, intestines, and left kidney. One of the shots to the chest had been fired while the gun was in contact with the body, and the other two shots had been fired from less than four feet. Dr. Gorniak stated her disagreement with one aspect of the autopsy report, testifying that, in her opinion, a wound on Lanier's back that had been identified in the autopsy report as an exit wound was actually an entrance wound, indicating that Lanier had been shot a fourth time in the back.

{¶10} Appellant testified on his own behalf at trial. Appellant testified that he and Lanier had been friends for ten or 11 years, and during that time they had sold drugs together. Appellant also testified that he and Lanier had gone to the Argosy Casino together, but they had gone their separate ways while there, and appellant therefore did not know whether Lanier had won or lost money.

{¶11} Appellant testified that when the two returned to Columbus from Indiana, they first stopped at appellant's house to get money, because the two were going to pool their money in order to buy drugs from a drug house on Brentnell Avenue. When they went to the drug house, Lanier went in with the money and a gun, while appellant waited in the SUV. When Lanier returned to the vehicle, Lanier had neither the drugs nor the money, and when appellant said he wanted to go get the money back, Lanier pulled the gun and pointed it at appellant. A struggle ensued, during which shots were fired and appellant ended up holding the gun. Appellant stated that he saw that Lanier had been shot, and took him to the Performance Paving parking lot because he believed Lanier would be more likely to receive help quickly that way. Appellant then testified that he drove away and abandoned the vehicle and gun out of fear.

{¶12} Ultimately, appellant was arrested in New Orleans, Louisiana, where he had fled after the shooting. During an interview with Columbus Police Detective Heather Collins, appellant denied shooting Lanier and denied abandoning his SUV after the shooting. At trial, appellant admitted that he had lied when he denied abandoning the SUV, but stated that he did not know whether he had shot Lanier.

{¶13} On March 27, 2009, the Franklin County Grand Jury indicted appellant on one count of aggravated murder in violation of R.C. 2903.01, one count of aggravated

robbery in violation of R.C. 2911.01, one count of kidnapping in violation of R.C. 2905.01, one count of tampering with evidence in violation of R.C. 2921.12, and one count of having a weapon while under a disability in violation of R.C. 2923.13. The aggravated murder and aggravated robbery charges each included firearm and repeat violent offender specifications, while the kidnapping charge included a firearm specification.

{¶14} Prior to the commencement of trial, the trial court held a hearing regarding the statements Lanier made to various people after the shooting, in which Lanier identified appellant as the person who shot him. At the conclusion of the hearing, the trial court concluded that the statements constituted dying declarations, and were therefore admissible hearsay pursuant to Evid.R. 804(B)(2). The court further concluded that Lanier's statements made to the Columbus paramedic were also admissible as statements made while seeking medical diagnosis and treatment. During trial, appellant renewed his objections to the admissibility of each of the statements.

{¶15} Appellant waived his right to a jury trial on the charge of having a weapon while under a disability and the two repeat violent offender specifications. The jury returned verdicts of guilty on the aggravated murder, aggravated robbery, kidnapping, and tampering with evidence charges, and on the three firearm specifications. The trial court rendered guilty verdicts on the charge of having a weapon while under a disability charge and on the two repeat violent offender specifications.

{¶16} In its initial sentencing entry, the trial court imposed a sentence of 30 years of incarceration on Count 1 (aggravated murder), plus three years of incarceration for the firearm specification, and five years of incarceration for the repeat violent

offender specification; ten years of incarceration on Count 2 (aggravated robbery), plus three years for the firearm specification, and five years for the repeat violent offender specification; ten years of incarceration on Count 3 (kidnapping), plus three years for the firearm specification; five years of incarceration on Count 4 (tampering with evidence), and five years of incarceration on Count 5 (having a weapon while under a disability). The court ordered the sentence on Counts 1 through 5 to be served concurrently with each other, but consecutively to a sentence imposed in a separate case. The court also merged the three firearm specifications and the two repeat violent offender specifications. As a result, the court's entry ordered appellant to serve a total of 39 and one-half years of incarceration. Subsequently, the trial court issued an amended entry in order to impose a life tail on the aggravated murder charge.

{¶17} Appellant filed this appeal, asserting six assignments of error:

> ASSIGNMENT OF ERROR #1
>
> BY ADMITTING VARIOUS STATEMENTS ALLEGEDLY MADE BY JESSE LANIER TO VARIOUS PERSONS AFTER HE WAS SHOT, THE COURT VIOLATED OHIO'S HEARSAY RULES AND APPELLANT'S RIGHT TO CONFRONT HIS ACCUSERS UNDER THE 6TH AMENDMENT TO THE U.S. CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.
>
> ASSIGNMENT OF ERROR #2
>
> APPELLANT'S CONVICTIONS WERE BOTH AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WERE NOT SUPPORTED BY THE SUFFICIENECY OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE U.S. CONSTITUTION, AND ARTICLE 1, SECTIONS 1 & 16 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR #3

THE TRIAL COURT ERRED IN CONVICTING AND SENTENCING THE APPELLANT ON AGGRAVATED ROBBERY AND KIDNAPPING COUNTS IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION AND OHIO'S MUTIPLE-COUNT STATUTE.

ASSIGNMENT OF ERROR #4

AFTER THE APPELLANT FILED HIS NOTICE OF APPEAL, THE COURT ISSUED AN AMENDED ENTRY THAT UNLAWFULLY ADDED A LIFE-TAIL TO THE APPELLANT'S SENTENCE.

ASSIGNMENT OF ERROR #5

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AMENDMENT TO THE U.S. CONSTITUTION, AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION.

ASSIGNMENT OF ERROR #6

THE COURT SHOULD HAVE EXCLUDED AN ALLEGED DYING DECLARATION MADE TO A FAMILY MEMBER IN A LEVEL ONE TRAUMA CENTER BASED ON PUBLIC POLICY AND STATUTORY GROUNDS.

{¶18} In his first assignment of error, appellant argues that the trial court erred by admitting into evidence statements made to five different people after he had been shot, in each of which he implicated appellant as the person who shot him. The people to whom Lanier made the statements were Rupe and Bridges, the two employees at Performance Paving who were present when Lanier was left in the company parking lot; Letki, the paramedic who rode in the ambulance to the hospital with Lanier; Johnson, Lanier's girlfriend; and Price, Lanier's father.

{¶19} Appellant argues that the trial court erred when it concluded that the statements made were dying declarations, and in concluding that the statements did not violate his right to confront witnesses against him as guaranteed by the United States and Ohio Constitutions.

{¶20} We review a trial court's decision regarding the admission of evidence for an abuse of discretion. *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, citing *State v. Issa*, 93 Ohio St.3d 49, 2001-Ohio-1290. Thus, our inquiry is limited to determining whether the trial court acted unreasonably, arbitrarily or unconscionably in deciding the evidentiary issues. *Conway*, citing *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68.

{¶21} Evid.R. 804(B)(2) establishes that dying declarations are an exception to the general rule prohibiting hearsay testimony, providing that, "[i]n a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant, while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death" are not excluded as hearsay if the declarant is unavailable as a witness. In order to be admissible as dying declarations, the evidence must show that the deceased person's statements were made under circumstances showing that the deceased had a sense of impending death, excluding from the person's mind any hope or expectation of recovery. *State v. Ray*, 8th Dist. No. 93435, 2010-Ohio-2348, ¶40. The declarant's mental state at the time the statements are made is decisive, even though courts have recognized that it can be difficult to determine whether the declarant sensed that death was approaching. *State v. Washington*, 1st Dist. No. C-090561, 2010-Ohio-3175.

{¶22} In this case, the evidence supports the conclusion that Lanier made the statements implicating appellant as the person who shot him under a sense of impending death. Lanier had been shot three or four times, including twice in the chest. His first request to the Performance Paving employees was to allow him to call his loved ones, and he specifically told his girlfriend he "might not make it." Appellant argues that the number of people to whom Lanier made statements establishes that he could not have believed death was imminent. However, the evidence showed that the statements were all made in a relatively short time frame between the time Lanier was shot and the time in which he was placed into the medically-induced coma from which he never recovered. Thus, we cannot say the trial court abused its discretion when it concluded that the statements were dying declarations excepted from application of the hearsay rule.

{¶23} Appellant further argues that admission of Lanier's statements violated appellant's right to confront the witnesses against him. The United States Supreme Court has concluded that in some cases, admission of out-of-court declarations that are admissible under some exception to the hearsay rule can violate a defendant's Sixth Amendment right to confront his or her accusers where the out-of-court statements are testimonial in nature. *Crawford v. Washington* (2004), 541 U.S. 36, 124 S.Ct. 1354. However, since *Crawford*, the United States Supreme Court has clarified that the *Crawford* confrontation analysis does not apply to testimonial hearsay that was admissible under common law, and has identified two types of statements that can be admitted without confrontation: dying declarations and statements where the lack of

ability to confront the speaker was created by the defendant's own action (also known as "forfeiture by wrongdoing"). *Giles v. California* (2008), 554 U.S. 353, 128 S.Ct. 2678.

{¶24} Because Lanier's statements were found to be dying declarations, the Confrontation Clause is not implicated in their admission into evidence. *State v. Washington*, supra. Thus, the trial court did not violate appellant's right to confront the witnesses against him by admitting Lanier's statements.

{¶25} Appellant also argues that the trial court erred by admitting into evidence that part of Lanier's statement to his father, Price, in which Lanier stated that appellant had robbed him. Appellant argues that this portion of the statement is not covered by the Evid.R. 804(B)(2) exception for dying declarations because it did not involve "the cause or circumstances of what the declarant believed to be his or her impending death." We disagree. Lanier's statement that appellant had robbed him, while not relating to the *cause* of his death, certainly related to the *circumstances* of his death.

{¶26} Consequently, appellant's first assignment of error is overruled.

{¶27} In his second assignment of error, appellant argues that his convictions were not supported by sufficient evidence, and were against the manifest weight of the evidence.

{¶28} When reviewing the sufficiency of the evidence supporting a criminal conviction, an appellate court must examine the evidence submitted at trial to determine whether such evidence, if believed, would convince an average person 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. See also *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789.

{¶29} This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172. Rather, the sufficiency of the evidence test "gives 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* at 319. Accordingly, the reviewing court does not substitute its judgment for that of the fact finder. *Jenks* at 279.

{¶30} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." Under this standard of review, the appellate court weighs the evidence in order to determine whether 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." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. However, in engaging in this weighing, the appellate court must bear in mind the fact finder's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶31} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was offered at trial. *State v. Campbell*, 10th Dist. No. 07AP-1001, 2008-Ohio-4831. The trier of fact is free to believe or disbelieve any or all of the testimony presented. *State v. Jackson*, 10th Dist. No. 01AP-973, 2002-Ohio-

1257. The trier of fact is in the best position to take into account the inconsistencies in the evidence, as well as the demeanor and manner of the witnesses, and to determine which witnesses are more credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503. Consequently, although appellate courts must sit as a "thirteenth juror" when considering a manifest weight argument, it must also give great deference to the trier of fact's determination on the credibility of the witnesses. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037.

{¶32} Regarding the sufficiency of the evidence, appellant focuses on his convictions for aggravated robbery and aggravated murder. Specifically, appellant argues that the state failed to prove that a theft offense occurred, and thus failed to establish all of the elements necessary to prove aggravated robbery; and that in the absence of proof of aggravated robbery, his conviction for aggravated murder cannot stand. Appellant also argues that his conviction for kidnapping also required proof that a theft offense occurred, and that the remainder of his convictions must fail because they were necessarily tied to the other charges.

{¶33} Initially, we note that the state was not required to prove a theft offense as a predicate to the kidnapping charge. Count 3 of the indictment charged appellant with kidnapping by stating that appellant had acted "with the purpose to facilitate the commission of a felony, to wit: Robbery, or flight thereafter, and/or to terrorize, or to inflict serious physical harm on * * * Jesse Lanier, or another." Thus, the state could have shown that appellant was guilty of kidnapping by either showing that appellant committed robbery, which would have required proof of a theft offense, or by showing

that appellant acted to terrorize or inflict physical harm, which would not have required such proof.

{¶34} As to appellant's claim regarding theft as a predicate offense for the aggravated murder charge, Count 1 of the indictment charged appellant with aggravated murder in violation of R.C. 2903.01, charging appellant with "purposely caus[ing] the death of another, to wit: Jesse Lanier, while committing or attempting to commit Aggravated Robbery." Thus, the state was required to prove a theft offense as a predicate offense to both the aggravated robbery and aggravated murder charges.

{¶35} The evidence at trial showed that in the hours before he was shot, Lanier had cashed in a significant amount of chips at the Argosy Casino. Becker of the Indiana Gaming Commission testified that his review of the casino's records regarding Lanier's activities at the casino showed that "Mr. Lanier was definitely ahead on the casino and had money in his pocket." (Tr. 298.) This money was not recovered from Lanier after his shooting. In addition, Price testified that Lanier told him appellant had robbed him. Viewed in a light most favorable to the state, this evidence was sufficient to establish that a theft offense occurred.

{¶36} In support of his argument that his convictions were against the manifest weight of the evidence, appellant points to what he alleges are inconsistencies between the statements made by Lanier after his shooting. Appellant points to the fact that only Price testified that Lanier said anything about a robbery. Appellant also points to the fact that Lanier referred to his shooter in different ways to different people, identifying the shooter at different times as Rodney, his aunt's boyfriend, and the boyfriend of a relative of his. Appellant also argues that his convictions were against the manifest

weight of the evidence because the jury improperly rejected his argument that he had acted in self-defense after Lanier pulled the gun on him, and improperly concluded that appellant acted with purpose to kill Lanier.

{¶37} However, we cannot say that the jury clearly lost its way and created a manifest injustice in rendering the verdicts in this case. The jury and the trial court in their roles as triers of fact were in the best position to consider any alleged inconsistencies in the different statements made by Lanier, as well as to consider the credibility of appellant's testimony regarding his claim of self-defense, and regarding whether appellant acted purposely in killing Lanier. Thus, we cannot say that the verdicts were against the manifest weight of the evidence.

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

{¶39} In his third assignment of error, appellant argues that the trial court erred in convicting and sentencing him on the charges of aggravated robbery and kidnapping because those two offenses should have merged. Merger of offenses is governed by R.C. 2941.25, which provides that when charges constitute allied offenses of similar import, the defendant can only be convicted on one charge. The test to be applied in such cases requires the court to first consider whether the two offenses are allied offenses of similar import, and then, if the offenses are allied offenses, to consider whether they were committed with a separate animus. *State v. Rance*, 85 Ohio St.3d 632, 1999-Ohio-291.

{¶40} The first step of the analysis requires consideration of the elements of the two offenses, to determine whether the elements correspond to such a degree that commission of one will result in commission of the other. *State v. Cabrales*, 118 Ohio

St.3d 54, 2008-Ohio-1625. The Supreme Court of Ohio has concluded that kidnapping, as defined in R.C. 2905.01(A)(2), and aggravated robbery, as defined in R.C. 2911.01(A)(1), are allied offenses of similar import. *State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1059.

{¶41} Appellant's indictment for kidnapping charged appellant with violating both R.C 2905.01(A)(2) (acting with purpose to facilitate the commission of any felony or flight thereafter) and 2905.01(A)(3) (acting with purpose to terrorize or inflict physical harm on the victim or another). The state argues that we need not determine whether the Supreme Court's decision in *Winn* applies to the R.C. 2905.01(A)(3) form of kidnapping because the evidence in this case shows that appellant acted with a separate animus.

{¶42} When considering whether kidnapping was committed with an animus separate from some other crime, " 'where the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions.' " *State v. Garrett*, 1st Dist. No. C-090592, 2010-Ohio-5431, ¶51, quoting *State v. Logan* (1979), 60 Ohio St.2d 126, syllabus.

{¶43} Appellant argues that the shooting occurred on the same street on which Lanier was subsequently left, and was therefore part of the same continuous action. However, the evidence showed that after Lanier had been shot, appellant drove some

distance before pulling Lanier from the SUV and leaving him on the Performance Paving parking lot. This action was substantial enough to show some significance independent of the aggravated robbery, and thus the two offenses were committed with a separate animus.

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

{¶45} In his fourth assignment of error, appellant argues that the trial court erred when it issued an amended entry imposing a life tail on appellant's sentence. Specifically, appellant argues that this action occurred after he had filed a notice of appeal with this court appealing the trial court's judgment, and that the trial court had therefore lost jurisdiction to take any further action in the case. Generally, after a notice of appeal has been filed, a lower court loses jurisdiction to issue any orders that would impair the ability of the appellate court to exercise jurisdiction over the issue that has been appealed. *CM Newspapers, Inc. v. Dawson* (Jan. 28, 1992), 10th Dist. No. 91AP-1067. The impairment "must be of a nature that actually interferes with the exercise of appellate jurisdiction by the appellate court." *Olen Corp. v. Franklin Cty. Bd. of Elections* (1988), 43 Ohio App.3d 189, 200.

{¶46} At the sentencing hearing, the trial court stated its intention to impose a sentence of 30 years to life. Thus, the trial court's amended entry was necessary to correct the error that occurred when the life tail was omitted from the sentencing entry. That correction does not interfere with our exercise of appellate jurisdiction to consider the issues before us on appeal.

{¶47} Consequently, appellant's fourth assignment of error is overruled.

{¶48} In his fifth assignment of error, appellant argues that he received ineffective assistance from trial counsel. In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that trial counsel's performance fell below an objective level of reasonable representation and that the defendant suffered prejudice as a result. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. In assessing such claims, courts must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id., 466 U.S. at 689, 104 S.Ct. at 2065.

{¶49} Appellant argues that trial counsel's performance was deficient in a number of ways. First, appellant argues that trial counsel may not have adequately preserved objections to all of the statements made by Lanier that the trial court admitted as dying declarations. We believe trial counsel did adequately preserve all such objections. Furthermore, given our disposition of appellant's first assignment of error, in which we concluded that the trial court did not err in admitting those statements, we cannot say that appellant suffered any prejudice as a result of failing to more fully object to their admission.

{¶50} Appellant also argues that trial counsel was ineffective for failing to object to the trial court's admission of Lanier's statements made to his father, Price, on either relevance or public policy grounds. Specifically, appellant argues that trial counsel should have objected based on public policy and statutory considerations regarding operation of Level One trauma centers. However, we cannot say that failure to object on those specific grounds plainly fell outside the wide range of reasonable professional assistance that we must presume was afforded.

{¶51} Finally, appellant argues that trial counsel was ineffective for failing to request a jury instruction that would have informed the jury that it could only consider Lanier's dying declarations for the charge of aggravated murder under Evid.R. 804(B)(2), and not for any of the other charges. However, given the other evidence relating to those charges, it appears that a limiting instruction regarding the statements made by Lanier would not have changed the outcome of the trial. Therefore, we cannot say that appellant suffered any prejudice as a result of counsel's failure to request such an instruction.

{¶52} Consequently, appellant's fifth assignment of error is overruled.

{¶53} In his sixth assignment of error, appellant argues that the trial court should have excluded Lanier's statement made to his father, Price, because the statement was made while Lanier was being treated in a Level One trauma center. Appellant argues that because Price was not on the staff of the trauma center, he was a visitor, and federal and state policies proscribe visitors in such trauma centers. Appellant claims that this public policy against having visitors in Level One trauma centers is violated by allowing a visitor to testify regarding dying declarations made by a patient in a trauma center.

{¶54} Essentially, appellant argues that the public policy considerations he has identified would negate the rules of evidence regarding admission of dying declarations, at least with respect to dying declarations made to someone present in the trauma center that is not part of the trauma center staff. However, we do not believe that the public policy considerations regarding visitors in trauma centers are implicated in the traditional considerations underlying the admission of hearsay statements under the

hearsay exception for dying declarations. Dying declarations have been deemed to be sufficiently reliable so as to warrant recognition of such statements as an exception to historical concerns regarding the reliability of hearsay statements, and nothing appellant points to in the rules regarding trauma centers calls into question the continued recognition of dying declarations as a hearsay exception.

{¶55} Accordingly, appellant's sixth assignment of error is overruled.

{¶56} Having overruled appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and BROWN, J., concur.

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