[Cite as *State v. Oteng*, 2015-Ohio-1231.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 14AP-466
v.	:	(C.P.C. No. 13CR-0224)
Dennis Oteng,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2015

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Carpenter Lipps & Leland LLP, *Kort Gatterdam*, and *Erik P. Henry*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant appeals from a judgment of the Franklin County Court of Common Pleas convicting him of murder, in violation of R.C. 2903.02(A), and felony murder, in violation of R.C. 2903.02(B). For the reasons that follow, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} In the early morning hours of January 5, 2013, Kingsley Owusu was shot and killed in the parking lot of the Filipino Center on Westerville Road in Columbus, Ohio. The victim's best friend, Benjamin Appiah, described the events that lead to Owusu's death as follows. In the late evening of January 4, 2013, Owusu and his friend

Gabe, also known as G-money, picked him up at home and traveled to Lounge 62 in Westerville. When they arrived at Lounge 62, they ran into a friend by the name of David Aseidu who was at the lounge with his friend Andrea d'Almeida. Appiah testified that he and all these other individuals hale from the West African nation of Ghana. He described the Ghanaian community in Columbus as a fairly tight knit group, and he stated that most members of the community know each other.

{¶ 3} At Aseidu's suggestion, the group of five left Lounge 62 and headed to the Filipino Center to attend a New Year's party co-hosted by Appiah's former girlfriend, Alexis Wellington, and her best friend, Helen Mamo. According to Appiah, he and Wellington had dated "on and off" for approximately one and one-half years prior to that time. (Tr. 335.) Appiah was also aware that appellant was the father of Wellington's six-year old daughter, Michelle.

{¶ 4} When they arrived at the party, G-money parked his vehicle at the back of the parking lot. Aseidu, who was traveling with d'Almeida, parked their vehicle closer to the main entrance of the Filipino Center. Appiah testified that he exited the vehicle and began walking toward the main entrance, just behind Owusu and G-money. As G-money and Owusu crossed the parking lot, a man by the name of Yaw Boayke confronted Owusu and began yelling at him in an "angry tone." (Tr. 353.) G-money stepped between the two and then struck Boayke in the face with his forehead. The two men fell to the ground wrestling before Appiah was able to pull G-money off of Boayke.

{¶ 5} When Boayke returned to the Filipino Center, he was bleeding from the mouth, and he told Mamo that G-money had head-butted him. By this time, Appiah had entered the Filipino Center to check out the party, while G-money and Owusu waited outside. Appiah then saw appellant and "his crew" of four or five men rush past him toward the parking lot. (Tr. 371.) Appiah recognized a man he knew as Daniel, also known as D.J., and another man he knew as Stevenson following appellant out the main entrance.

{¶ 6} At that point, Appiah went out to the parking lot where he saw appellant approaching Owusu with a handgun raised and pointed at him. Appiah got between Owusu and appellant in an effort to diffuse the situation. When he turned away from appellant to face Owusu, he saw that Owusu was holding a small handgun. Appiah

pleaded with his friend to give him the gun. He told Owusu "[l]et's just leave the scene." (Tr. 370.) According to Appiah, Owusu handed him the gun.

{¶ 7} At that moment, Appiah heard a gun shot ring out behind him, and he began running toward the main entrance of the Filipino Center to get away. When he reached the entrance, he realized Owusu was not with him. Concerned for his friend, Appiah turned to head back outside, but he was momentarily delayed by a security guard. When Appiah made it outside, he saw appellant and Owusu facing one another about arms length apart with appellant pointing a handgun at Owusu. Appiah testified that he was standing about ten feet away from the two men with a clear view when he saw appellant fire a shot at Owusu.

{¶ 8} According to Appiah, the shot struck Osuwu in the upper body, and he immediately fell to the ground. Appellant then rushed over to Owusu and began kicking him in the head. When appellant broke off his assault and ran, Appiah tried to fire a shot from Owusu's gun, but it jammed. Appiah ejected two live shells from the gun and then began running after appellant, shooting the gun in the air as appellant fled the parking lot in his black BMW.

{¶ 9} Owusu died as a result of a single gunshot wound to the chest. Columbus Police arrested appellant on January 6, 2013, at the home of his friend Kwame Kusi.

{¶ 10} The Franklin County Grand Jury indicted appellant on one count of murder, in violation of R.C. 2903.02(A), and one count of felony murder, in violation of R.C. 2903.02(B). A jury found appellant guilty of both charges in the indictment. The trial court merged the two counts for purposes of sentencing and imposed a prison term of 15 years to life, consecutive to a mandatory 3-year firearm specification.

{¶ 11} Appellant filed a timely notice of appeal to this court on June 11, 2014.

II. ASSIGNMENTS OF ERROR

{¶ 12} Appellant's assignments of error are as follows:

> [I.] THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO PROVIDE A QUALIFIED INTERPRETER TO TRANSLATE RECORDED TELEPHONE CALLS INVOLVING APPELLANT SPEAKING HIS NATIVE LANGUAGE, IN VIOLATION OF APPELLANT'S RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS AS GUARANTEED BY THE OHIO AND UNITED STATES CONSTITUTION.

[II.] APPELLANT WAS DENIED HIS RIGHTS TO THE PRESUMPTION OF INNOCENCE, TO A FAIR TRIAL AND TO DUE PROCESS CONTRARY TO THE OHIO AND UNITED STATES CONSTITUTIONS WHEN THE JURY HEARD EVIDENCE REGARDING THE EXECUTION OF SEARCH WARRANTS.

[III.] APPELLANT WAS DENIED HIS RIGHTS TO THE PRESUMPTION OF INNOCENCE, TO A FAIR TRIAL AND TO DUE PROCESS CONTRARY TO THE OHIO AND UNITED STATES CONSTITUTIONS WHEN THE JURY HEARD EVIDENCE OF APPELLANT'S INCARCERATION PRIOR TO TRIAL.

[IV.] THE PROSECUTION COMMITTED MISCONDUCT BY ASKING LEADING QUESTIONS, THEREBY DENYING APPELLANT HIS RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS CONTRARY TO THE OHIO AND UNITED STATES CONSTITUTIONS.

[V.] APPELLANT'S RIGHTS TO CONFRONT THE WITNESSES AGAINST HIM, TO A FAIR TRIAL, AND TO DUE PROCESS AS GUARANTEED BY THE U.S. AND OHIO CONSTITUTIONS WERE VIOLATED BY THE ADMISSION OF HEARSAY EVIDENCE.

[VI.] THE ADMISSION OF OTHER-ACTS TESTIMONY VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND TO A FAIR TRIAL AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS.

[VII.] THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY ON CAUSATION IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHTS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS.

[VIII.] STATEMENTS MADE BY THE PROSECUTOR CONSTITUTED PROSECUTORIAL MISCONDUCT THEREBY DENYING APPELLANT A FAIR TRIAL AND DUE PROCESS OF LAW, IN VIOLATION OF APPELLANT'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION, AND SECTIONS 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.

> [IV.] APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.
>
> [X.] THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.

III. LEGAL ANALYSIS

A. First Assignment of Error

{¶ 13} In appellant's first assignment of error, appellant contends that the trial court erred when it refused to appoint a foreign language interpreter to translate appellant's tape-recorded telephone conversation with Wellington. We disagree.

{¶ 14} During Wellington's direct examination, Wellington testified that she received several telephone calls from appellant prior to the trial of this matter. Wellington testified that in those telephone conversations, appellant attempted to persuade her not to cooperate with the police or the prosecution. According to Wellington, appellant was trying to manipulate her testimony.

{¶ 15} Wellington testified that she spoke in English during her telephone conversations with appellant, but that he spoke to her both in English and in the native tongue of Ghana, known as Twi. Wellington testified that she learned Twi growing up in a home where both of her parents spoke the language. Wellington stated that she is able to understand Twi "fluently" but that she cannot speak the language herself. (Tr. 617.) Following Wellington's testimony regarding the content of her telephone conversations with appellant, plaintiff-appellee, the State of Ohio, played excerpts of the tape-recorded telephone conversation for Wellington as she related to the jury what appellant was saying.

{¶ 16} Appellant objected to the tape-recorded telephone conversation on the grounds that a qualified foreign language interpreter was required to translate appellant's

statements. Although counsel was not sure of the legal basis for the objection, it is clear from the transcript that counsel was not concerned that his client would be unable to understand the statements made in Twi. The trial court determined that a foreign language interpreter was not required under the circumstances. The court noted that the state had provided counsel with the audiotapes in the discovery process. The trial court also stated that had appellant needed to employ an independent interpreter to transcribe the audiotapes prior to trial, "the Court would have made that available." (Tr. 671.) Appellant made no such request.

{¶ 17} In 2013, the Supreme Court of Ohio adopted Sup.R. 88 regarding the use of interpreters. The rule states in relevant part as follows:

> (A) When appointment of a foreign language interpreter is required.
>
> A court shall appoint a foreign language interpreter in a case or court function in either of the following situations:
>
> (1) *A party or witness who is limited English proficient or non-English speaking* requests a foreign language interpreter and the court determines the services of the interpreter are necessary for the meaningful participation of the party or witness;
>
> (2) Absent a request from a party or witness for a foreign language interpreter, *the court concludes the party or witness is limited English proficient or non-English speaking and determines the services of the interpreter are necessary for the meaningful participation of the party or witness.*

(Emphasis added.)

{¶ 18} In this instance, Wellington is an English speaking witness who also understands Twi; appellant speaks both English and Twi. The evidence does not show that either Wellington or appellant is limited English proficient or non-English speaking. Under such circumstances, Sup.R. 88 does not require the appointment of a foreign

language interpreter.[1] Moreover, we fail to see how the absence of an interpreter prevented appellant's meaningful participation in the proceedings. There is no question that appellant was present in the courtroom as Wellington testified. Had Wellington misinterpreted appellant's recorded statements, he was in the best position to assist his defense counsel in shaping an effective cross-examination.

{¶ 19} Moreover, we find appellant suffered no prejudice resulting from the fact that no foreign language interpreter was appointed. Wellington had previously testified, without objection, of her own recollection of the general content of the telephone calls and her impression of appellant's intentions. Appellant's trial counsel acknowledged as much when he stated: "if she's testifying to the substance of the conversation of what's being said, then playing the recordings is nothing but cumulative." (Tr. 597.) Although the tape-recorded telephone conversations were clearly relevant when offered either as corroboration of Wellington's claim that appellant had contacted her by telephone or to refresh Wellington's recollection as to the content of the conversations, the fact remains that the jurors did not speak Twi. Consequently, Wellington's translation of appellant's recorded statements, as they were played in the courtroom, is no more probative of what appellant said to her than her own recollection to which she testified. In any case, Wellington's testimony was admissible evidence of her pretrial conversations with appellant, and it was for the jury to determine whether they believed or disbelieved Wellington's testimony regarding appellant's prior statements.

{¶ 20} For the foregoing reasons, appellant's first assignment of error is overruled.

B. Second Assignment of Error

{¶ 21} In his second assignment of error, appellant argues that the trial court denied him his constitutional and statutory right to the presumption of innocence by the erroneous admission of evidence regarding search warrants issued by the court during the

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[1] R.C. 2311.14(A)(1) contains similar provisions and provides in relevant part as follows:

> Whenever because of a hearing, speech, or other impairment *a party to or witness* in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such person.

(Emphasis added.)

investigation of Owusu's murder. The state points out that appellant's trial counsel did not object to this evidence.

{¶ 22} Pursuant to 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." This rule places three limitations on a reviewing court's decision to correct an error despite the absence of a timely objection at trial: (1) there must be an error, i.e., a deviation from a legal rule, (2) the error must be plain so that it constitutes an obvious defect in the trial proceedings, and (3) the error must have affected substantial rights such that the trial court's error must have affected the outcome of the trial. *State v. Humberto*, 196 Ohio App.3d 230, 2011-Ohio-3080, ¶ 28 (10th Dist.), citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). The decision to correct a plain error is discretionary and should be made " 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Id.* at ¶ 29, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶ 23} We perceive no plain error on the part of the trial court with regard to the admission of this evidence. Appellant has not cited, nor has the court found in its own research, a single case from this or any other Ohio court holding either that evidence regarding search warrants issued during the investigation of a crime is, per se, inadmissible as evidence at the trial of the matter or that the erroneous admission of such evidence deprives a criminal defendant of his or her statutory and constitutional right to the presumption of innocence. Moreover, appellant does not contend that the trial court failed to properly instruct the jury regarding the presumption of innocence and the burden of proof. We are to presume that the jury followed the trial court's instructions. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160.

{¶ 24} For the foregoing reasons, appellant's second assignment of error is overruled.

C. Third Assignment of Error

{¶ 25} In his third assignment of error, appellant argues that the trial court erred when it denied his motion for a mistrial after d'Almeida testified on cross-examination that appellant was in jail prior to trial. We disagree.

{¶ 26} The decision whether to grant a mistrial rests in a trial court's sound discretion. *State v. Jones*, 10th Dist. No. 12AP-1091, 2014-Ohio-674, ¶ 10; *State v. Glover*, 35 Ohio St.3d 18 (1988). This standard is based upon the notion that the trial court is in the best position to determine whether the circumstances of the case necessitate the declaration of a mistrial or whether other corrective measures are adequate. *State v. Bruce*, 10th Dist. No. 07AP-355, 2008-Ohio-4370, ¶ 75. A reviewing court may not substitute its judgment for that of the trial court absent an abuse of discretion. *Id*. A mistrial should be granted only where the party seeking it demonstrates that he or she suffered material prejudice so that a fair trial is no longer possible. *Id*., citing *State v. Franklin*, 62 Ohio St.3d 118 (1991).

{¶ 27} During cross-examination, d'Almeida testified that Aseidu told her he ran into appellant "downtown," which is a slang term for jail. (Tr. 563.) She also stated that she was surprised at appellant's recent weight loss because "when people are locked up," they usually gain weight. (Tr. 564.) Although d'Almeida made these comments in response to counsel's questions about appellant's appearance, her comments clearly went beyond the intended scope of the query. Appellant claims that the testimony gave the jury the impression that appellant "was a dangerous person who needed to be locked up because he was guilty of the crime for which he was on trial." (Appellant's Brief, 26.)

{¶ 28} Initially, we note that defense counsel explained the concept of reasonable doubt in his opening statement, and appellant makes no claim that the trial court failed to properly instruct the jury regarding the presumption of innocence and the burden of proof. Thus, we disagree that d'Almeida's testimony necessarily gave the jury the impression that appellant "was a dangerous person who needed to be locked up because he was guilty of the crime for which he was on trial." (Appellant's Brief, 26.) At worst, d'Almeida's testimony permitted the jury to infer that appellant had been in jail for some period of time after the shooting.

{¶ 29} The transcript reveals that it was the trial court, on its own initiative, that interrupted d'Almeida's testimony when her answers became non-responsive. Nevertheless, even if we were to conclude that the trial court should have acted earlier, we cannot say that the admission of this unexpected testimony regarding appellant's pretrial incarceration materially prejudiced appellant's defense. *See State v. Robinson*, 8th Dist.

No. 99290, 2013-Ohio-4375, ¶ 74 (trial court did not abuse its discretion by failing to grant a mistrial and refusing to give a curative instruction after a state's witness made an "unresponsive, fleeting comment" that the defendant was "in prison"); *State v. Brentlinger*, 3d Dist. No. 13-04-10, 2004-Ohio-4529, ¶ 30-34 (finding no error in a trial court's denial of a motion for a mistrial where the prosecution improperly questioned a witness on how often she visited her brother in jail); *State v. Freeman*, 5th Dist. No. 2006CA00388, 2007-Ohio-6270, ¶ 17-30 (appellant was not denied a fair trial when a witness described him to the jury as wearing "a pair of jail shoes" where the jury was properly instructed on the presumption of innocence and the concept of reasonable doubt). Accordingly, we hold that that the trial court did not abuse its discretion by denying the motion for mistrial. Appellant's third assignment of error is overruled.

D. Fifth Assignment of Error

{¶ 30} For purposes of clarity, we will consider appellant's fifth assignment of error out of order. In appellant's fifth assignment of error, appellant claims that the trial court denied him a fair trial by admitting hearsay statements that unfairly prejudiced his defense. We disagree.

{¶ 31} " '[T]he admission or exclusion of relevant evidence rests within the sound discretion of the trial court.' " *State v. Robb*, 88 Ohio St.3d 59, 68 (2000), quoting *State v. Sage*, 31 Ohio St.3d 173 (1987), paragraph two of the syllabus. Absent an abuse of discretion, as well as a showing that the accused has suffered material prejudice, an appellate court will not disturb the ruling of the trial court as to the admissibility of evidence. *State v. Jewett*, 10th Dist. No. 11AP-1028, 2013-Ohio-1246, ¶ 52, citing *State v. Martin*, 19 Ohio St.3d 122, 129 (1985).

{¶ 32} The first example of hearsay evidence cited by appellant is Wellington's testimony regarding an incriminating statement allegedly made by D.J. just seconds after the shooting. Wellington testified that when she was kneeling next to Owusu as he lay dying in the parking lot, she heard a man named D.J. screaming at appellant "you shot him, get in the car." (Tr. 647.)

{¶ 33} The trial court admitted Wellington's testimony, over appellant's objection, under the "excited utterance" exception to the hearsay rule. In order to admit a statement as an excited utterance under Evid.R. 803(2), four elements must be satisfied: (1) an event

startling enough to create nervous excitement in the declarant, (2) the statement must be made while the declarant was still in a state of excitement created by the startling event, (3) the statement must relate to the startling event, and (4) the declarant must have personally observed the event. *State v. Garrison*, 10th Dist. No. 05AP-603, 2006-Ohio-6142, ¶ 17, citing *State v. McKenzie*, 8th Dist. No. 87610, 2006-Ohio-5725, ¶ 29. " '[T]he decision of the trial judge, in determining whether or not a declaration should be admissible under the spontaneous exclamations exception to the hearsay rule, should be sustained where such decision appears to be a reasonable one, even though the reviewing court, if sitting as a trial court, would have made a different decision.' " *State v. Duncan*, 53 Ohio St.2d 215, 219 (1978), quoting *Potter v. Baker*, 162 Ohio St. 488, 500 (1955).

{¶ 34} According to Wellington, after Osuwu was shot, the scene outside the Fillipino Center became chaotic, with people running, screaming, and crying. According to Wellington, when D.J. made the statement incriminating appellant, he was very near to Osuwu as he lay dying in her arms. Wellington testified that D.J. appeared distressed and agitated as he screamed at appellant. Based upon this testimony, it is reasonable to conclude that D.J. made the incriminating statement during an event startling enough to create nervous excitement, that he made the statement while he was in a state of excitement created by the startling event, that the statement identified appellant as the cause of the startling event, and that he personally observed the event. We find no abuse of discretion on the part of the trial court in ruling that D.J.'s statement was an excited utterance under Evid.R. 803(2) and admitting Wellington's testimony over appellant's objection.

{¶ 35} Appellant next contends that Aseidu's statement about seeing appellant "downtown" is inadmissible hearsay. Although defense counsel later moved for a mistrial based upon Wellington's unsolicited disclosure that appellant was in jail prior to trial, counsel never objected to the testimony on the grounds of inadmissible hearsay. Accordingly, we review the matter under the plain error standard. *Humberto* at ¶ 28. As we have previously concluded that appellant could not have been materially prejudiced by the admission of Wellington's unexpected reference to appellant's incarceration, we find no plain error.

{¶ 36} Appellant also takes exception to d'Almeida's testimony regarding a brief conversation that took place between appellant and Aseidu just prior to the shooting. d'Almeida testified as follows:

> A. After [appellant] reached in he walked up to my car and spoke to [Aseidu] and asked him if he was with them.
>
> * * *
>
> Q. Okay. And what was [Aseidu's] response?
>
> A. He said, get the F away from us with this BS; like, you need to chill.

(Tr. 552.)

{¶ 37} Defense counsel did not object to the testimony. Consequently, we must determine whether the admission of Aseidu's hearsay statement constitutes plain error. In our view, Aseidu's statement arguably qualifies as an excited utterance. At the time Aseidu allegedly made the statement at issue, a violent confrontation had taken place between Boayke and G-money, appellant had already fired at least one shot from a handgun, and he was standing at Aseidu's car door holding a handgun. d'Almeida testified that she observed these events from inside the parked vehicle in which she and Aseidu were seated.

{¶ 38} Moreover, even if Aseidu's statement was inadmissible hearsay, the statement tends to show only that appellant was involved in the altercation and seeking support; the statement does not necessarily implicate him in the murder of Owusu. Consequently, the prejudice to appellant from the hearsay statement is relatively insubstantial and does not rise to the level required to establish plain error. *Humberto*; *Barnes.*

{¶ 39} For the foregoing reasons, appellant's fifth assignment of error is overruled.

E. Fourth Assignment of Error

{¶ 40} In his fourth assignment of error, appellant contends that he was denied a fair trial by the prosecutor's continued use of leading questions in his direct examination of the state's witnesses. For example, appellant contends that the prosecutor asked leading questions of Wellington when he laid the foundation for the admission of D.J.'s

hearsay statement under the excited utterance standard. Appellant also contends that the prosecutor asked leading questions of Wellington regarding her pretrial telephone conversations with appellant. In appellant's view, the prosecutor's continued use of leading questions rose to the level of prosecutorial misconduct warranting reversal. We disagree.

{¶ 41} Pursuant to Evid.R. 611(C), "[l]eading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony." However, "the trial court has discretion to allow leading questions on direct examination." *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, ¶ 166, citing *State v. D'Ambrosio*, 67 Ohio St.3d 185, 190 (1993).

{¶ 42} A prosecutor may be guilty of misconduct if he or she continues to ask leading questions after the trial court has sustained objections to such questioning. *See State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶ 149. However, to constitute reversible error, such misconduct must pervade the trial to such a degree that there was a denial of due process. *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶ 205.

{¶ 43} Whether a question may be answered "yes" or "no" is not the correct criteria for determining if they were leading questions. *See Netzley v. Nationwide Mut. Ins. Co.*, 34 Ohio App.2d 65, 82 (2d Dist.1971); *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶ 138. In fact, a "question to which an answer of yes or no would be conclusive of the matter in issue is not necessarily leading, where the question calls for a direct affirmative or negative answer but is no more suggestive of one than the other." 81 American Jurisprudence 2d, Witnesses, Section 717 (2015). Our review of the trial transcript reveals that the prosecutor routinely employed closed-ended questions in his direct examination of the state's witness, but that the questions were not always suggestive of the answer desired by the prosecutor.

{¶ 44} With regard to Wellington's testimony about her telephone conversations with appellant, we note that Wellington answered "yes" when the prosecutor asked if she felt manipulated and threatened by appellant, but she responded in the negative when he asked her if she felt frightened. Although the prosecutor's questions called for a "yes" or "no" answer, the questions were not leading because they were no more suggestive of one answer than the other. Similarly, with regard to Wellington's testimony about the

"startling event" that precipitated D.J.'s incriminating statement about appellant, the mere fact that the questions were closed-ended does not mean that the desired answer was suggested by the question. In short, the record does not fully support appellant's claims about the prosecutor's alleged improper examination techniques.

{¶ 45} Appellant also cites the prosecutor's use of leading questions to induce Wellington to supply the meaning of the term "merk," as used by appellant in his telephone conversations with Wellington:

> Q. Did the defendant ever say, I should have merked [Appiah] also?
>
> A. Yes, he did.
>
> Q. Are you familiar with the term, merk?
>
> A. Yes
>
> Q. Slang term?
>
> A. Yes
>
> Q. To you is that a slang term for the meaning of kill?
>
> A. Yes
>
> [DEFENSE COUNSEL]: Objection, leading.

(Tr. 664.)

{¶ 46} Even though the prosecutor framed the question in terms of what "merk" meant to Wellington, the question arguably suggested the desired answer and was, therefore, an improper leading question. The trial court sustained the objection and struck the answer from the record. The trial court also encouraged the prosecutor to employ more open-ended queries. The prosecutor rephrased the question by asking Wellington "what does the term merk mean to you?" Wellington answered "[i]t means to kill." (Tr. 665.)

{¶ 47} Appellant also cites the following exchange between the prosecutor and Appiah as an example of the improper use of leading questions:

> Q. Were you ever made aware of the fact that [Boayke] also had problems with [Owusu]?
>
> A. I didn't know that until, like, actually on the 4th. That's when I found they do have problems with [Owusu].
>
> Q. *You mean the day the defendant killed* [*Owusu*]?
>
> A. Yes.

(Emphasis added.) (Tr. 339-40.)

{¶ 48} The trial court sustained appellant's objection and ordered the testimony stricken from the record. The trial court also instructed the jury not to consider the answer. The prosecutor moved on to another line of questioning.

{¶ 49} As a general rule, when the trial court sustains objections to a leading question and the prosecutor rephrases the question, the defendant is not deprived of a fair trial. *State v. Taylor*, 10th Dist. No. 10AP-939, 2011-Ohio-3162, ¶ 31, citing *State v. Kleekamp*, 2d Dist. No. 23533, 2010-Ohio-1906 (the trial court's repeated sustaining of objections to leading questions and the prosecutor's rephrasing to elicit the same testimony did not deprive the defendant of a fair trial); *State v. Joseph*, 3d Dist. No. 1-91-11 (Dec. 23, 1993) (no denial of a fair trial where the trial court sustained defense counsel's objections to leading questions and the prosecutor rephrased the question); *State v. Lorenzano*, 9th Dist. No. 2644 (Aug. 9, 1978) (upon objection, a leading question may be rephrased in one or more questions in non-objectionable form).

{¶ 50} While we agree that some of the prosecutor's questions were leading, the record does not support appellant's contention that the prosecutor persisted in using leading questions even after objections had been sustained. Thus, the record does not support a claim of prosecutorial misconduct. *Diar* at ¶ 170. Moreover, even if we were to conclude that the prosecutor acted improperly in the examination of the state's witnesses, such misconduct did not pervade the trial to such a degree that there was a denial of due process. *Id.* at ¶ 205.

{¶ 51} In short, we hold that the trial court did not abuse its discretion in denying appellant's motion for new trial. *State v. Ross*, 2d Dist. No. 22958, 2010-Ohio-843, ¶ 109. Appellant's fourth assignment of error is overruled.

F. Sixth Assignment of Error

{¶ 52} In his sixth assignment of error, appellant contends that the trial court erred when it permitted the state to introduce specific instances of appellant's prior "bad acts" in an effort to prove that appellant had both a grudge against the victim and that he was a bad father.

{¶ 53} Kusi testified that, prior to the shooting incident, appellant had informed him that he and Owusu "were not on good terms" and that there had been problems between the two on "more than one occasion before January 5th of 2013." (Tr. 813.) Kusi was not asked to elaborate nor did he provide any specifics regarding these occasions.

{¶ 54} Evid.R. 404(B) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, *such as proof of motive*, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." (Emphasis added.) The state made no attempt to use the evidence of appellant's bad feelings toward Owusu as proof of anything other than appellant's motive to harm him. As such, the admission of the testimony did not violate Evid.R. 404(B). *See, e.g., State v. Harris*, 10th Dist. No. 09AP-578, 2010-Ohio-1688, ¶ 21; *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, ¶ 174.

{¶ 55} With regard to Wellington's testimony that it was "unusual" for appellant to come over to her apartment and ask to see his daughter, we do not agree with appellant that such testimony necessarily requires the inference that appellant is a bad father. Moreover, defense counsel did not object to the testimony which means that the plain error standard applies. *Humberto.* In our view, the allegedly erroneous admission of this testimony was neither an obvious error nor did it have any affect on the outcome of this case.

{¶ 56} For the foregoing reasons, appellant's sixth assignment of error is overruled.

G. Seventh Assignment of Error

{¶ 57} In his seventh assignment of error, appellant claims that the trial court erroneously instructed the jury regarding causation and that the erroneous instruction unfairly prejudiced his defense. Appellant failed to object to the causation instruction at

trial, and he has waived all but plain error for purposes of appeal. *State v. Phillips*, 10th Dist. No. 14AP-79, 2014-Ohio-5162, ¶ 165, citing Crim.R. 30.

{¶ 58} In *State v. Burchfield*, 66 Ohio St.3d 261 (1993), the trial court, in a murder case, instructed the jury as follows:

> The causal responsibility of the defendant for an unlawful act is not limited to its immediate or most obvious result. *He is responsible for the natural, logical and foreseeable results that follow, in the ordinary course of events, from an unlawful act.*
>
> *The test for foreseeability is not whether the defendant should have foreseen the injury in its precise form or as to a specific person.* The test is whether a reasonably prudent person in the light of all the circumstances would have anticipated that death or injury or physical harm was likely to result to anyone from the performance of the unlawful act or failure to act.

(Emphasis added.) *Id.* at 261-62.[2]

{¶ 59} The Supreme Court in *Burchfield* questioned the use of foreseeability instruction in a murder case given the potential to mislead jurors regarding the state's burden of proof. *Id.* at 263. However, the Supreme Court has also stated that "[t]he use of that [language] does not require reversal where the instructions as a whole make clear that the jury must find purpose to kill in order to convict." *State v. Phillips*, 74 Ohio St.3d 72, 100 (1995).

{¶ 60} The causation instruction given to the jury in this case reads in relevant part as follows:

> Before you can find the defendant guilty of murder, you must find the State has proved beyond a reasonable doubt that on or about the 5th day of January, 2013, in Franklin County, Ohio, the *defendant purposely caused the death of* [*Owusu*].
>
> *A person acts purposefully when it is his specific intention to cause a certain result. To do an act purposefully is to do it intentionally and not accidentally. Purpose and intent mean the same thing. The purpose with which a person does an act*

[2] The *Burchfield* court noted that the causation instructions "were taken practically verbatim from 4 Ohio Jury Instructions * * * Section 409.56." *Id.* at 261.

> *is known only to himself unless he expresses it to others or indicates it by his conduct. Since you cannot look into the mind of another, you must determine purpose from all the facts and circumstances in evidence.*
>
> * * *
>
> Cause is an act or failure to act which in the natural and continuous sequence directly produces the death and without which it would not have occurred. *Cause occurs when the death is the natural and foreseeable result of the act or failure to act.*

(Emphasis added.) (Tr. 961-62.)

{¶ 61} Although the trial court used the term "foreseeable" in its causation instruction, the instructions as a whole make clear that the jury must find purpose to kill in order to convict. Consequently, the alleged error in the causation instruction does not rise to the level of plain error. *See State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, ¶ 167 (causation instruction that defendant was responsible "for the natural and foreseeable consequences that follow, in the ordinary course of events, from the unlawful act," was not reversible error, where the trial court had properly instructed the jury regarding the state's burden of proof).

{¶ 62} For the foregoing reasons, appellant's seventh assignment of error is overruled.

H. Tenth Assignment of Error

{¶ 63} For purposes of clarity, we will consider appellant's tenth assignment of error out of order. In appellant's tenth assignment of error, appellant contends that the guilty verdict is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶ 64} 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). 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 all the essential elements of the crime. *State v. Jenks*,

61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 78; *State v. Williams*, 99 Ohio St.3d 493, 2003-Ohio-4396.

{¶ 65} The state's evidence in support of conviction in this case, if believed, is clearly sufficient to prove appellant's guilt beyond a reasonable doubt. R.C. 2903.02(A) defines the offense of murder as purposely causing the death of another. Here, Appiah's testimony combined with the testimony of the coroner, if believed, is legally sufficient to sustain the verdict of the jury. According to Appiah, he was standing about ten feet away from appellant and Owusu, with a clear view of the two men, when he saw appellant fire a shot at Owusu. Appiah testified that Owusu was hit in the upper body and fell to the ground immediately. Dr. John Daniels, M.D., of the Franklin County Coroner's Office testified that Owusu died from a single gunshot wound to the chest.

{¶ 66} When we examine the foregoing evidence in a light most favorable to the state, there can be no doubt that a rational trier of fact could have found that the state proved beyond a reasonable doubt all the essential elements of the crime of murder. Accordingly, we find that the evidence is legally sufficient to sustain the verdict of the jury.

{¶ 67} Turning to appellant's manifest weight argument, we note that while sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 25, citing *Thompkins* at 386. Under the manifest weight of the evidence standard, a reviewing court must ask the following question: whose evidence is more persuasive—the state's or the defendant's? *Id.* at ¶ 25. Although there may be legally sufficient evidence to support a judgment, it may nevertheless be against the manifest weight of the evidence. *Thompkins* at 387; *see also State v. Robinson*, 162 Ohio St. 486 (1955).

{¶ 68} Although appellant moved for acquittal at the close of the state's evidence, he rested his case without presenting any additional evidence after the trial court denied the motion. Thus, appellant's manifest weight challenge in this case focuses almost entirely on the issue of witness credibility. In this context, when determining whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the

credibility of the witnesses, and determine whether, in resolving any conflicts in the evidence, the jury clearly lost its way and thereby created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). " 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' " *Wilson* at ¶ 25, quoting *Thompkins* at 387.

{¶ 69} A conviction should be reversed on manifest weight grounds only in the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin*, 20 Ohio App.3d 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*, 10th Dist. No. 96APA04-511 (Feb. 6, 1997).

{¶ 70} Appellant first contends that Appiah's testimony regarding the relative position of appellant and Owusu at the time of the shooting is not consistent with Dr. Daniels' testimony regarding the entry wound. According to Dr. Daniels, the slug entered Owusu's right shoulder and traveled downward and at an angle through his ribs and spine before perforating his right lung and lodging in his left lung. Appellant argues that had he been standing directly in front of Owusu when he fired the shot, as Appiah stated, the bullet would not have entered appellant's right shoulder.

{¶ 71} Our review of Dr. Daniels' testimony shows that he was unable to determine the range from which the shot was fired. Although he testified on cross-examination that, based upon the position of the entry wound, the shooter must have fired from Owusu's right and at some distance, his medical opinions in this case focused on the cause of death and the path the bullet took after it entered the body, not the relative position of the victim and the shooter. Thus, while this particular detail of Appiah's eyewitness account of the shooting does not appear to be completely consistent with Dr. Daniels' findings regarding the entry wound, the jury obviously believed that the inconsistency did not create a reasonable doubt as to appellant's guilt.

{¶ 72} "A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. The trier of fact is free to believe or disbelieve all or any of the testimony." (Citation omitted.) *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶ 16. *See also State v. Banks*, 10th Dist. No. 09AP-13, 2009-Ohio-4383, ¶ 15 (concluding that the factfinder is free to resolve or discount alleged inconsistencies). "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." *Williams*, 2009-Ohio-3237, at ¶ 16. It is the province of the factfinder to determine the truth from conflicting evidence, whether the conflicting evidence comes from different witnesses or is contained within the same witness's testimony. *State v. Eisenman*, 10th Dist. No. 10AP-809, 2011-Ohio-2810, ¶ 19.

{¶ 73} Moreover, there was other evidence admitted in the case which corroborated much of Appiah's account of the events surrounding the shooting. For instance, Mamo did not see who fired the fatal shot, but she corroborated Appiah's testimony that appellant began kicking Owusu in the head as he lay in the parking lot. Ernesto Dulay, the man who ran the Filipino Center, was sleeping in his van in the parking lot on the night in question. He testified that he was awakened by the sound of gunshots. Dulay saw a man with a gun kicking another man in the head repeatedly as the man lay on the ground.

{¶ 74} Wellington testified that when she was kneeling next to Owusu as he lay dying in the parking lot, she heard a man named D.J. screaming at appellant "you shot him, get in the car." (Tr. 647.) She also testified that appellant attempted to manipulate her testimony and to convince her not to cooperate with police and the prosecutor, which is probative of appellant's consciousness of guilt. *See State v. Brodbeck*, 10th Dist. No. 08AP-134, 2008-Ohio-6961, ¶ 48, citing *State v. Brown*, 8th Dist. No. 52593 (July 28, 1988) (attempts to convince the eyewitness to falsify her testimony are admissible to support an inference that the defendant knew he was guilty). Kusi testified that he received a telephone call from appellant just hours after the incident and that appellant stated "[I] shot him." (Tr. 816.) Although appellant recanted his admission the next day, Kusi understood that appellant was referring to Owusu.

{¶ 75} Although d'Almeida did not see appellant shoot Owusu, her recollection of the sequence of events corroborates much of Appiah's account. She saw appellant fire a shot from what she believed to be a handgun, and then a short time later she saw him fire a second shot. As she ran toward the Filipino Center, she saw Appiah standing outside and firing a shot into the air.

{¶ 76} Nevertheless, appellant claims that the evidence supports the possibility that either G-money or Appiah accidentally shot Owusu. Amy Amstutz from the Columbus Police Laboratory opined that, based upon the number of spent shell casings found in the area and the varying caliber of the shells, it was possible that three different firearms were present at the scene. In support of his claim that G-money could have been the shooter, appellant points to the fact that G-money was one of three individuals at the scene who tested positive for gunshot residue and the fact that Wellington's pretrial statements to police implicated G-money. In support of his claim that Appiah could have fired the fatal shot, appellant points to the fact that Appiah initially denied firing a weapon, but later admitted that he had fired the weapon he obtained from Owusu.

{¶ 77} The fact that Wellington admittedly changed her story during her trial testimony gave the jury reason to disbelieve her testimony. Similarly, Appiah's prior felony conviction and the fact that he lied to police gave the jury a reason to disbelieve his testimony. However, " 'where a factual issue depends solely upon a determination of which witnesses to believe, that is the credibility of witnesses, a reviewing court will not, except upon extremely extraordinary circumstances, reverse a factual finding * * * as being against the manifest weight of the evidence.' " *In re L.J.*, 10th Dist. No. 11AP-495, 2012-Ohio-1414, ¶ 21, quoting *In re Johnson*, 10th Dist. No. 04AP-1136, 2005-Ohio-4389, ¶ 26. 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. J.E.C., Jr.*, 10th Dist. No. 12AP-584, 2013-Ohio-1909, ¶ 46, citing *In re C.S.*, 10th Dist. No. 11AP-667, 2012-Ohio-2988, ¶ 31.

{¶ 78} In the final analysis, we cannot say that the jury lost its way in resolving issues of credibility and weight and in finding appellant guilty of murder. Even though there is evidence that arguably supports a mere possibility of innocence, we do not believe that this is one of the extremely extraordinary circumstances where we may reverse a

factual finding of the jury as being against the manifest weight of the evidence. *State v. Jenks* at 279.

{¶ 79} For the foregoing reasons, appellant's tenth assignment of error is overruled.

I. Eighth Assignment of Error

{¶ 80} In his eighth assignment of error, appellant claims that the prosecutor committed misconduct in closing argument. Specifically, appellant contends that the prosecutor acted improperly when he stated that several of the state's witnesses were "telling the truth" when he referred to appellant as a "good criminal" and when he implied that appellant had disposed of evidence after speaking with an attorney. (Appellant's Brief, 42-43.) Appellant's trial counsel did not object to the closing argument.

{¶ 81} "The test regarding prosecutorial misconduct in closing arguments is whether the remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant." *State v. Smith*, 14 Ohio St.3d 13, 14 (1984). "[T]he prosecution must avoid insinuations and assertions which are calculated to mislead the jury." *Id*. In cases of clear misconduct, a mere instruction that closing arguments are not evidence is insufficient to remedy the error. *Id.* at 15. A conviction will be reversed for prosecutorial misconduct only where it is clear beyond a reasonable doubt that, absent the prosecutor's comments, the jury would not have found the defendant guilty. *State v. Benge*, 75 Ohio St.3d 136, 141 (1996). Furthermore, because appellant's trial counsel did not object to any of the alleged misconduct, the plain error standard applies to this assignment of error. *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179.

{¶ 82} "Vouching occurs when the prosecutor implies knowledge of facts outside the record or places his or her personal credibility in issue." *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, ¶ 229. Our review of the argument reveals that the prosecutor made the claim that the state's witnesses were telling the truth only in the context of the evidence presented at trial, not in the context of his knowledge of facts outside the record or his personal belief. As such, the prosecutor did not vouch for the credibility of his witnesses.

{¶ 83} Prosecutors are normally given wide latitude in their closing arguments. *State v. Maurer*, 15 Ohio St.3d 239 (1984). During closing arguments, the prosecution is

free to comment upon "what the evidence has shown and what reasonable inferences may be drawn therefrom." *State v. Lott*, 51 Ohio St.3d 160, 165 (1990). Here, the prosecutor made his comment about appellant seeking advice of an attorney in an effort to explain why appellant called Kusi on the telephone just hours after the shooting and told him "[I] shot him" and yet changed his story the next day. (Tr. 816.) Kusi had testified at trial that appellant recanted his prior admission after informing Kusi that he had spoken with legal counsel and intended to turn himself in to police.

{¶ 84} In appellant's closing, his trial counsel argued that the lack of corroborating forensic evidence gave rise to a reasonable doubt. Given appellant's theory of the case and in light of Kusi's testimony, we cannot say that the prosecutor's comments were improper. The same logic holds true for the prosecutor's comment that appellant is a "good criminal." The record shows that the prosecutor made the comments in the state's rebuttal and only after appellant's trial counsel questioned the state's lack of corroborating forensic evidence. Moreover, given the overwhelming evidence of appellant's guilt, we cannot say that the impropriety of the prosecutor's argument, if any, affected the outcome of the trial. Accordingly, appellant has not satisfied the plain error standard. *Perez*.

{¶ 85} For the foregoing reasons, appellant's eighth assignment of error is overruled.

J. Ninth Assignment of Error

{¶ 86} In his ninth assignment of error, appellant argues that he received ineffective assistance of 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*, 466 U.S. 668 (1984).

{¶ 87} Appellant argues that trial counsel was ineffective in several respects. First, appellant argues that trial counsel provided ineffective assistance to appellant by failing to employ a qualified foreign language interpreter to translate the conversations between appellant and Wellington. However, as stated in connection with appellant's first assignment of error, a foreign language interpreter was not required under the

circumstances. Additionally, there is nothing in the record to suggest that Wellington's translation was inaccurate.

{¶ 88} Appellant next contends that trial counsel provided ineffective assistance to appellant by failing to conduct a pretrial review of the tape-recorded telephone conversations between appellant and Wellington. Appellant cites the following colloquy as evidence of trial counsel's inadequate review:

> Q. And one of the things I noticed is that never in any of your discussions with him on the phone do you say, I can't believe you did it, I can't believe you shot him, why would you do that, I'm in shock at what you did. You never say anything like that in any of the conversations. True?
>
> A. No. That's not true.
>
> Q. So – you actually say that in those recordings?
>
> A. Oh, not those recordings, but other recordings I have.

(Tr. 687-88.)

{¶ 89} Our review of the transcript reveals that trial counsel asked only about the tape-recorded telephone conversations that the state had played for the jury during Wellington's direct examination, but that Wellington referred to other tape-recorded telephone conversations in her response. Contrary to appellant's claim, the colloquy does not show that trial counsel failed to review all of the tape-recorded telephone conversations.

{¶ 90} To the extent that appellant claims that his trial counsel performed poorly by failing to object to the allegedly improper remarks made by the prosecutor in closing argument and the prosecutor's continuous use of leading questions, we note that defense counsel's failure to object to prosecutorial misconduct "does not constitute ineffective assistance of counsel *per se*, as that failure may be justified as a tactical decision." (Emphasis sic.) *State v. Gumm*, 73 Ohio St.3d 413, 428 (1995). Furthermore, we have already concluded that a timely objection on the grounds of prosecutorial misconduct would not likely have been successful. Thus, trial counsel was not ineffective for failing to raise those objections.

{¶ 91} With regard to the admission of hearsay testimony, we have determined either that the testimony was admissible pursuant to a recognized hearsay exception or that the outcome of the trial would not have been different if trial counsel had timely objected. Consequently, appellant cannot satisfy the second prong of the *Strickland* test. Similarly, as noted in connection with our discussion of appellant's fifth and sixth assignments of error, a timely objection to the "other-acts evidence" and the evidence regarding search warrants would likely have failed. (Appellant's Brief, 37.) Thus, trial counsel was not ineffective for failing to raise those objections.

{¶ 92} Finally, appellant argues that even if we conclude that none of the above counsel's errors are serious enough, standing alone, to justify reversal due to ineffective assistance of counsel, his trial counsel's many errors, when considered together, deprived him of a fair trial. However, as we have previously concluded that trial counsel either did not err in the manner alleged by appellant or that counsel's errors did not affect the outcome of the trial, we find no merit in appellant's cumulative error theory. Accordingly, appellant's ninth assignment of error is overruled.

IV. CONCLUSION

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

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
