[Cite as *State v. Davis*, 2005-Ohio-121.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 20135
v.	:	T.C. CASE NO. 03 CR 245
SQUIRE M. DAVIS	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 14th day of January, 2005.

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R. LYNN NOTHSTINE, Atty. Reg. No. 0061560, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

BEN M. SWIFT, Atty. Reg. No. 0065745, Suite 445, 333 W. First Street, Dayton, Ohio 45402
Attorney for Defendant-Appellant

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FREDERICK N. YOUNG, J.

{¶ 1} Squire Davis is appealing the judgment of the Montgomery County Common Pleas Court, which found him guilty of burglary.

{¶ 2} On January 22, 2003 at approximately 2:30 a.m., 911 received a called

from Aniko Preston, stating that Davis was knocking on her back window and she was afraid that he would break it. In the course of the call, Preston told the operator that Davis was her ex-boyfriend and that she had "put him out" of the residence. While on the phone with the operator, Preston stated that Davis had broke the window and entered the residence. Preston pleaded with the operator for the police to hurry. The recording of the 911 call also recorded a male voice in the background making statements, including, "Open the window, bitch."

{¶ 3} The police officers testified that when they had arrived Preston had been frantic. The officers stated that she had been shaking, pacing back and forth, stuttering, and had kept repeating herself. Preston directed the officers to the kitchen and said, "There he is. He's in there. He broke my window." The police then arrested Davis, taking him into custody. The officers noted that Davis did not show any signs of being under the influence of alcohol.

{¶ 4} After Davis's arrest, the police spoke with Preston who told them that Davis had knocked on her back window, stating that his mother had "put him out." Preston said that she called Davis's mother and then called 911. While Preston was on the phone with the 911 operator, Davis broke the window. Preston characterized Davis as her ex-boyfriend, informing the officers that Davis had previously lived at the residence but that she had not seen him for several months. In Preston's bedroom, the officers saw a broken window, and glass behind the bed and on the bed and shelf. Further, the blinds in Preston's bedroom were in disarray.

{¶ 5} Officer Shawn Hue testified that Preston had understood that the police were taking Davis to jail - not his mother's house. Officer Hue testified that although

Preston had appeared upset when he spoke with her, she had not appeared to be angry. The following morning Preston reported to the detective section of the police department to be interviewed. Preston met with Detective Michael Debored. At this interview, Preston again referred to Davis as her ex-boyfriend and stated that he had lived with her three months prior to the incident in question. Moreover, Preston stated that Davis did not have a key to the residence and was not supposed to be there. Preston reiterated that Davis broke a window and entered the house.

{¶ 6} On April 4, 2003, Davis was indicted by the Montgomery County Grand Jury on one count of burglary for breaking Preston's window and entering the home without privilege to do so.

{¶ 7} A month prior to trial, Preston was again interviewed by two assistant prosecutors and a prosecutor's office investigator. At this time, Preston stated that she had been afraid when she called 911, not that she was angry. Preston further stated that Davis had not lived with her for more than two months when the incident occurred, even though some of his clothes were still in the home. Preston stated that on January 22, 2003, Davis was living with his mother and was not permitted to be in her residence. However, Preston also made it clear at this meeting that she did not want to proceed with criminal charges against Davis for this incident.

{¶ 8} A jury trial was begun on July 7, 2003. The jury found Davis guilty as charged, and he was sentenced to serve one year in prison. Davis has filed this appeal, asserting the following nine assignments of error.

{¶ 9} "[1.] APPELLANT'S RIGHTS PURSUANT TO ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION AND THE SIXTH AND FOURTEENTH

AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN A BIASED JUROR WAS SEATED ON THE JURY PANEL.

{¶ 10} "[2.] APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL THROUGH PROSECUTORIAL MISCONDUCT.

{¶ 11} "[3.] APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

{¶ 12} "[4.] THE TRIAL COURT ERRED IN PROVIDING JURORS WITH AN INCOMPLETE AND MISLEADING JURY INSTRUCTION.

{¶ 13} "[5.] THE TRIAL COURT ERRED IN PERMITTING A BIASED JUROR TO REMAIN ON THE PANEL.

{¶ 14} "[6.] THE TRIAL COURT ERRED IN FAILING TO ENSURE APPELLANT'S FAIR TRIAL BY PERMITTING PROSECUTORIAL MISCONDUCT.

{¶ 15} "[7.] THE TRIAL COURT ERRED IN PERMITTING JURORS TO TAKE NOTES.

{¶ 16} "[8.] APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 17} "[9.] THE CUMULATIVE EFFECT OF THE ERRORS OCCURRING AT TRIAL DEPRIVED APPELLANT OF A FAIR TRIAL."

{¶ 18} Appellant's first and fifth assignments of error

{¶ 19} As Davis's first and fifth assignments of error relate to a particular juror on the panel, we will address them together. Davis argues that he was denied his right to an impartial jury and that the trial court erred when a juror, who stated that she was more likely to believe a police officer's testimony, was permitted to remain on the jury.

We disagree.

{¶ 20} The Sixth Amendment to the United States Constitution guarantees a defendant the right to a trial by fair and impartial jurors. *Irvin v. Dowd* (1961), 366 U.S. 717. In order to protect this fundamental right, the court conducts voir dire with the purpose of empaneling a fair and impartial jury, free from prejudice or bias. *State v. Twyford*, 94 Ohio St.3d 340, 346, 2002-Ohio-894; *State v. Crago* (1994), 93 Ohio App.3d 621, 641.

{¶ 21} A prospective juror may be challenged for cause if he demonstrates a "predisposition to decide a case or an issue in a certain way, which does not leave the mind perfectly open to conviction." *State v. Carruth*, Montgomery App. No. 1997, 2004-Ohio-2317. The failure to challenge a juror for cause results in a defendant waiving any potential error from the prospective juror's placement on the jury. Absent an objection from either the state or the defendant to a juror for cause, a trial court should be reluctant to sua sponte excuse the juror for cause. *State v. Smith*, 80 Ohio St.3d 89, 105, 1997-Ohio-355. The decision whether or not to disqualify a juror is a discretionary function and as such will not be reversed absent an abuse of discretion. Id. An abuse of discretion demonstrates an attitude by the court that is unreasonable, arbitrary, or unconscionable. *State v. Reiner*, 89 Ohio St.3d 342, 356, 2000-Ohio-190.

{¶ 22} At the voir dire for Davis's trial, the following exchange occurred:

{¶ 23} "Prosecutor: Ms. Gibson, you know a police officer?

{¶ 24} "Gibson: Yes.

{¶ 25} "Prosecutor: And who would that be?

{¶ 26} "Gibson: A brother.

{¶ 27} "Prosecutor: Is it a local police officer?

{¶ 28} "Gibson: Sugarcreek Township.

{¶ 29} "Prosecutor: Do you talk about cases a lot? Because your brother-in-law is a police officer, would you be more likely to believe a police officer?

{¶ 30} "Gibson: Yes.

{¶ 31} "Prosecutor: Are they more like any witness?

{¶ 32} "Gibson: Yes." (Tr. 24)

{¶ 33} When the defense counsel voir dired Ms. Gibson, he asked, "Now if, Ms. Gibson, if you listen to the testimony in this case today and tomorrow and you don't believe any of the testimony from the witness stand or any of the evidence that's presented, what does your verdict have to be?." Ms. Gibson replied, "Not guilty." (Tr. 47). All of the jurors, including Ms. Gibson, indicated their understanding of the need to follow the law as instructed, to be fair and impartial, and that Davis was presumed innocent until the State had proven his guilt beyond a reasonable doubt. (Tr. 11, 15, 42).

{¶ 34} Davis argues that he was denied his right to a trial by a fair and impartial jury when Ms. Gibson was seated on the jury. Davis argues that Ms. Gibson was biased because she indicated that she would be more likely to believe a police officer and in this case, two police officers testified for the State while none testified on behalf of Davis. However, Davis failed to object at trial to the seating of Ms. Gibson on the jury. Moreover, Ms. Gibson did not dispute the possibility that the State would not be able to present credible evidence to support finding Davis guilty. Ms. Gibson stated that if she did not believe any of the evidence the State presented, she would find Davis not

guilty. Additionally, Ms. Gibson understood that Davis was presumed innocent until proven otherwise, the need to be fair and impartial, and the jury's obligation to follow the law as instructed by the court. In light of Ms. Gibson's responses to the voir dire questions, we cannot say that Davis was denied his right to a trial with a fair and impartial jury. Further, we cannot say that the trial court abused its discretion in failing to sua sponte excuse Ms. Gibson when neither party had objected to her presence. Davis's first and fifth assignments of error are without merit and are overruled.

Appellant's second and sixth assignment of error:

{¶ 35} Davis argues that the prosecutor made inappropriate remarks during the voir dire of the jurors and during closing argument that deprived him of his right to a fair trial and that the trial court should not have permitted the prosecutor to make those comments. We disagree.

{¶ 36} In determining whether a defendant was denied his constitutional right to a fair trial as a result of remarks made by a prosecutor in the course of trial, an appellate court must first determine whether the remarks were improper and if so, whether they prejudicially affected the substantial rights of the accused. *State v. Smith*, 87 Ohio St.3d 424, 442, 2000-Ohio-450. A defendant has waived all but plain error if his counsel failed to object to comments made by a prosecutor during voir dire or closing argument. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, ¶136 & 141. The plain error doctrine provides that a conviction will only be reversed if "but for the error, the outcome of the trial clearly would have been otherwise." *State v. Williams*, 99 Ohio St.3d 439, 2003-Ohio-4164, ¶40 quoting *State v. Long* (1978), 53 Ohio St.2d 91.

{¶ 37} Davis initially objects to the following statement by the prosecutor during

voir dire.

{¶ 38} "Now, can you think about a relationship that you're invested in, doesn't [sic] make sense that you perhaps would wait it out? Anybody else have a question about that? You expect people to get out of relationships because you think that's the thing you would do. Is it possible to still care about someone if something scary has happened between you two? Do you think that's possible? Anybody think, no, that should stop the love? Does anybody here think that problems between people who may be having a relationship together should be handled outside of court?" (Tr. 22).

{¶ 39} The State was aware that Preston would be testifying on behalf of Davis because she did not want him prosecuted for breaking into her home. The prosecutor properly sought to determine which, if any, of the jurors would be predisposed to acquitting Davis because Preston did not want him prosecuted. Additionally, the prosecutor had a duty to determine which jurors, if any, might be predisposed against domestic violence cases and inclined to acquit Davis on the basis that the burglary arose out of a domestic dispute. Thus, we cannot say that the prosecutor's questioning during voir dire was improper. Moreover, we do not see that the outcome of the trial would have been different had the prosecutor not made the statement. Although a juror did express resistance to the idea that people understandably stay in bad relationships, this juror was allowed to remain on the panel and would have been predisposed in favor of Davis if she was predisposed at all. We do not see any merit in Davis's argument that he was denied his right to a fair trial by the prosecutor's statements during voir dire.

{¶ 40} Davis additionally objects to the prosecutor making the following statements during the rebuttal portion of the State's closing argument.

{¶ 41} "The urgency is based on her fear because he has broken into her home and he's not allowed to be there. You also now have heard about how she went down to the detective section that morning, she followed through with this case and told Detective Debored she had put him out. He had no key. He had no right to be there. That he was on January 22, 2003 [sic] when she is still scared, still afraid about what's going on and has not had time [to] get back together with the defendant and have him work his magic and his love and convince her no, no, no, no, to let her fix this.

{¶ 42} "* * *

{¶ 43} "We don't have to prove that he threatened her or harmed her or took anything. There were some questions about that. All we have to prove is that he, by force, broke into that window and he didn't have permission to be there and thank goodness nothing else happened, thank goodness.

{¶ 44} "* * *

{¶ 45} "You don't have to break through a window if you lived there. Maybe he lived there in the past. He had not lived there in a couple months. He had no key and he had been living at his mom's because she put him out. She had the right to put him out. She never said on the call, he's breaking into our window. It was her window because he didn't live there then. No, it's not the [S]tate of Ohio's house. That's obvious. It is Aniko's house and the [S]tate is here to protect her, to protect individuals from having loved ones commit crimes against them. That's what the [S]tate of Ohio does and whether or not the victims change their mind and are trying to fix things, that doesn't mean she didn't call 911 in the beginning because a crime had been committed * * *." (Tr. 197-200)

{¶ 46} Davis argues that these statements improperly implied that Davis convinced Preston to lie on his behalf when there was no evidence that he did so and that Davis should be convicted to protect Preston from him. However, we do not agree. When viewed in context, the prosecutor's comments about Davis working his magic on Preston are appropriate. The State's case hinged on the jury believing that Preston was telling the truth on the 911 recording and in her initial interviews with the police officers and that Preston's testimony that Davis had a privilege to be in her apartment on the night in question was a lie. As the State's case required the jury to find Preston's testimony incredible, the prosecutor was free to comment on the fact that once Davis and Preston reunited, Preston changed her account of the events. Moreover, even if we had found that this statement was improper, it did not change the outcome of the trial. The jury clearly understood that Preston made statements on the 911 recording and to the police officers that directly conflicted with her testimony at trial. Moreover, the jury could hear on the 911 recording the panic and fear in Preston's voice when she was saying that Davis was breaking her window to get in her house. The prosecutor's remarks about Preston changing her version of the events did not change the outcome of the trial.

{¶ 47} As for the prosecutor's remark about people needing the State to protect them from their loved ones and her statement "thank goodness nothing else happened," the State asserts that this remark was merely in response to Davis's counsel's questions and statements that pointed to the fact that no crimes occurred inside the residence. At trial, Davis's counsel elicited testimony by Preston that Davis had not committed any crimes once he entered the residence on January 22, 2003.

Thus, the prosecutor was permitted to argue that whether Davis committed any crimes once inside the residence was irrelevant because the State did not have to prove that Davis committed any crimes inside the residence. The prosecutor's expression of relief that Davis did not commit any additional crimes falls within the wide latitude afforded prosecutors during closing arguments in addressing this issue.

{¶ 48} The prosecutor's statement about protecting people from having loved ones commit crimes against them likewise does not amount to reversible error. As we mentioned above, a justifiable concern of the State in this case was a possible acquittal by the jury because Preston did not want Davis incarcerated. The State had reason to be concerned that the jury might refuse to acquit Davis because the victim of the crime did not want Davis prosecuted and therefore would not cooperate with the prosecution. The prosecutor's statement during closing argument about the State protecting people from loved ones who would commit crimes against them was an argument to dissuade the juror from acquitting Davis on that basis and provided an explanation for the State's continued prosecution of the case despite Preston's desires to the contrary. We do not think that the prosecutor's remarks were improper.

{¶ 49} Having reviewed the prosecutor's remarks both during voir dire and closing arguments we cannot say that the prosecutor made improper remarks that determined the outcome of Davis's trial. Davis's second and sixth assignments of error are without merit and are overruled.

Appellant's seventh assignment of error:

{¶ 50} Davis argues that the trial court erred in permitting the jury to take notes during the trial and to use them in deliberations. We disagree.

{¶ 51} The Ohio Supreme Court has held that a trial court has the discretion to permit or prohibit note-taking by jurors. *State v. Waddell*, 75 Ohio St.3d 163, 170, 1996-Ohio-100 syllabus. If a trial court wishes a jury to take notes, the court may sua sponte order materials furnished to jurors and inform them that they may take notes if they wish. Id. The failure to object to the court's decision to permit note-taking by jurors waives all but plain error on appeal. Id. at 166. Thus, the defendant must show that the outcome of the trial would have to clearly have been different but for the trial court's permitting note-taking by the jury. Id.

{¶ 52} At Davis's trial, his counsel did not object to the trial court's decision to allow note taking by the jury. Therefore, our review is limited to a review for plain error. Davis argues that jury note-taking has not been approved in Ohio and is generally discouraged. However, as noted above, the Supreme Court stated in *Waddell* that a trial court has discretion to permit a jury to take notes at a trial. Additionally, Davis has offered no evidence that the jury would have acquitted him if they had not been permitted to take notes. The record does not demonstrate whether the jurors took notes or if they were relied upon during jury deliberations. We cannot say that the trial court's decision to permit the jurors to take notes determined the outcome of this trial. Appellant's seventh assignment of error is without merit and is overruled.

Appellant's third assignment of error:

{¶ 53} Davis argues that his counsel was ineffective for failing to adequately voir dire juror Gibson or challenge her seating on the jury, failing to object to the prosecutor's alleged improper remarks, and failing to object to the trial court's decision to allow the jurors to take notes. We disagree.

{¶ 54} We evaluate ineffective assistance of counsel arguments in light of the two prong analysis set forth in *Strickland v. Washington* (1984), 466 U.S. 668. Trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. See id. at 688. To reverse a conviction based on ineffective assistance of counsel, it must be demonstrated that trial counsel's conduct fell below an objective standard of reasonableness and that his errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. See id. at 687. Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective assistance of counsel. See id. at 689.

{¶ 55} First, we will address Davis's argument that his counsel was ineffective for failing to object to the prosecutor's remarks during voir dire and closing argument. As we said above, the prosecutor's remarks were proper as they were in the wide latitude afforded prosecutors in their arguments and voir dire. Moreover, even if we were to find that these statements were improper, we have already stated that they did not impact the outcome of the trial. Therefore, we cannot say that Davis was rendered ineffective assistance of counsel by his counsel's failure to object to the prosecutor's remarks.

{¶ 56} Also, Davis argues that his counsel was ineffective for failing to object to the trial court's permission for the jury to take notes during the trial. As we said above when addressing Davis's seventh assignment of error, Ohio permits trial courts in their discretion to allow jurors to take notes. Therefore, his counsel was not ineffective for failing to object to this. Moreover, as we noted above, the record does not show

whether any of the jurors actually took notes or relied upon them. Davis cannot show that the outcome of the trial would have been different if his counsel had objected and the jurors had not taken notes. Having reviewed this argument, we cannot say that Davis was rendered ineffective assistance of counsel.

{¶ 57} Finally, Davis argues that he received ineffective assistance of counsel by his counsel's failure to object to the seating of juror Gibson after she indicated in voir dire that she would be more likely to believe the testimony of a police officer or in failing to conduct a more extensive voir dire of Gibson. However, in order to obtain a reversal of a conviction based on a claim of ineffective assistance of counsel, the defendant must show that but for the counsel's errors the outcome of the trial would be different. Davis cannot demonstrate that he would have been acquitted if Gibson had not been seated on the jury. Gibson indicated in her voir dire that if the State did not present any credible evidence of Davis's guilt it would have to acquit. Therefore, we cannot say that absent Davis's trial counsel's failure to object to Gibson as a juror, Davis would not have been convicted. Therefore, we do not find that Davis was rendered ineffective assistance of counsel. Davis's third assignment of error is without merit and is overruled.

Appellant's fourth assignment of error:

{¶ 58} Davis argues that the trial court abused its discretion when it refused to include in its answer to a jury question a statement instructing the jury that inferences may not be drawn from other inferences. We disagree.

{¶ 59} When reviewing a trial court's response to a question posed by the jury, an appellate court utilizes an abuse of discretion standard. *State v. Ward* (Mar. 2,

2001), Montgomery App. No. 18211, at *3, citing *State v. Carter*, 72 Ohio St.3d 545, 553, 1995-Ohio-104. Further, unless the court's abuse of discretion materially prejudiced the defendant's case, the appellate court will not reverse the trial court's decision. Id. citing *State v. Long* (1978), 53 Ohio St.2d 91, 98. Further, the Ohio Supreme Court has stated that there is no need for a specific warning against stacking inferences where an instruction was made prior to the commencement of jury deliberations regarding making inferences. *State v. Group*, 98 Ohio St.3d 248, 2002-Ohio-7247, ¶111-114.

{¶ 60} During jury deliberations, the jury sent the following question to the court.

{¶ 61} "The statement 'but are not required to' is in dispute. Does that mean you can make inference off of direct evidence or take it for face value or does this mean you can make inference on what you believe the facts are." (Tr. 214).

{¶ 62} In response, the trial court stated, "You can, but are not required to, make an inference from facts that you find have been established by direct evidence." (Tr. 215).

{¶ 63} Davis's counsel requested additional language to the jury clarifying that the jury may not draw an inference from circumstantial evidence. The trial court denied Davis's counsel's request, stating:

{¶ 64} "[The] Court does not interpret this question as essentially can you make an inference from an inference. They're simply asking for a clarification from the phrase, but are not required to. And the court, * * * is * * * repeating that an inference can be made from direct evidence. So the request to go beyond and instruct the jury about inference on an inference is overruled, okay?" (Tr. 216).

{¶ 65} Davis now argues that he was prejudiced by the trial court's refusal to give the jury this additional instruction about stacking inferences. In particular, Davis points to the fact that the jury struggled to reach a verdict to support his argument. However, we do not find that the trial court's instruction or refusal to give an additional instruction was an abuse of discretion. The trial court's statement to the jury did not permit the jury to make an inference based on an inference. Rather, the court's statement reiterated that if one made an inference, it must be derived from facts established by direct evidence. As the trial court gave appropriate instructions to the jury prior to the commencement of deliberations and in response to the jury's question, we cannot say that the trial court abused its discretion in failing to give a specific warning against stacking inferences to the jury. Davis's fourth assignment of error is without merit and is overruled.

Appellant's eighth assignment of error:

{¶ 66} Davis argues that his conviction was against the manifest weight of the evidence. We disagree.

{¶ 67} When a conviction is challenged on appeal as being against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and 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." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. A judgment should be reversed as being against the manifest weight of the evidence "only in the exceptional case in which

the evidence weighs heavily against the conviction." *Martin*, supra at 175.

{¶ 68} Davis argues that the weight of the evidence favors a finding that he had a privilege to be in the Prescott Avenue residence. At trial, Preston testified that on the date of the incident she and Davis had both been residing at the residence on Prescott and that he had permission to be in the dwelling. Further, Preston testified that she and Davis had both been responsible for paying the bills for the residence and that Davis had had a key to the property. Preston additionally claimed that she had informed the police that night that Davis lived with her, showing them bills and clothing of Davis's indicating he resided at the address.

{¶ 69} However, the State also presented evidence in the form of testimony from police officers who responded to Preston's 911 call that night and the recording of Preston's 911 call. The recording of Preston's 911 call was strong evidence that Davis and Preston did not live together at the time of the incident. On the recording, Preston told the operator that Davis was her ex-boyfriend and that she had "put him out." The recording also demonstrates Preston telling Davis that he was not supposed to be there. Moreover, immediately after the incident, Preston told the police officers that Davis lived with his mother, was not supposed to be at the residence, and that he did not have a key to the residence.

{¶ 70} Moreover, the State presented evidence in the form of Preston's lease in which she listed the occupants of the residence as herself and her children - not Davis. Further, the State presented evidence in the form of a letter written by Davis that Preston had given to her caseworker in which he explained that the DP&L bill was Preston's responsibility and that his name was on it merely due to her poor credit

history. (Tr. 135-139, Ex. 12). Additionally, the police officers' testimony contradicted Preston's claim at trial that she merely called the police because she was angry because Davis was intoxicated. The police officers testified that Preston had been upset the night Davis broke her window - not angry and that Davis, though loud, had not been intoxicated.

{¶ 71} Having reviewed the transcript of the trial, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice. The evidence presented by the State supports Davis's conviction, which was not against the manifest weight of the evidence. Davis's eighth assignment of error is without merit and is overruled.

Appellant's ninth assignment of error:

{¶ 72} Davis argues that cumulative effect of errors at his trial deprived him of his right to a fair trial. We disagree.

{¶ 73} When an appellate court has reviewed the record in a defendant's trial and has failed to find any individual, prejudicial error, no cumulative error can have occurred. *State v. Blankenship* (1995), 102 Ohio App.3d 534, 557. In reviewing Davis's various assignments of error, we have not found a single instance of prejudicial error occurring at trial. Therefore, we cannot say that the cumulative effect of the errors occurring at trial deprived Davis of his right to a fair trial. Davis's ninth assignment of error is without merit and is overruled.

{¶ 74} The judgment of the trial court is affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

R. Lynn Nothstine
Ben Swift
Hon. Dennis J. Langer