[Cite as *State v. Barksdale*, 2011-Ohio-630.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 23422
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-3283
v.	:	
	:	
CHRISTOPHER BARKSDALE	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 11th day of February, 2011.

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FAIN, J.

{¶ 1} Defendant-appellant Christopher Barksdale appeals from his conviction and sentence for two counts of Felonious Assault. He argues that his convictions are against the manifest weight of the evidence and that they are not supported by sufficient evidence. He also contends that he was denied the effective assistance of

trial counsel because counsel failed to object to instances of prosecutorial misconduct. We conclude that because Barksdale has failed to comply with App.R. 9, we must presume the regularity of the trial court proceedings and affirm his conviction and sentence. The judgment of the trial court is Affirmed.

I

{¶ 2} Barksdale was indicted on two counts of Felonious Assault. A jury found Barksdale guilty as charged, and the trial court sentenced him accordingly. From his conviction and sentence, Barksdale appeals.

II

{¶ 3} Barksdale's First Assignment of Error is as follows:

{¶ 4} "BARKSDALE'S CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

{¶ 5} Barksdale's Second Assignment of Error is as follows:

{¶ 6} "BARKSDALE'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE."

{¶ 7} In his First Assignment of Error, Davis maintains that his convictions for felonious assault are not supported by sufficient evidence and that they are against the manifest weight of the evidence. In his Second Assignment of Error, Barksdale maintains that he was denied the effective assistance of trial counsel, because counsel failed to object to instances of prosecutorial misconduct.

{¶ 8} Appellate Rule 9(B) requires an appellant to cause the court reporter to

file a transcript of the trial court proceedings with the clerk of courts for inclusion in the appellate record. Appellate Rule 9(A) states that "[a] videotape recording of the proceedings constitutes the transcript of proceedings other than hereinafter provided, and, for purposes of filing, need not be transcribed into written form. * * * When the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs."

{¶ 9} In this case, Barksdale did cause the court reporter to file a videotaped recording of the three-day trial. On December 8, 2009, we ordered Barksdale to provide this Court with either a complete transcript or with the relevant portions of a written transcript. Barksdale complied four months later with 11 pages of transcript, consisting of several questions and answers from each of nine different witnesses, as well as a couple of statements from the State's closing argument and from the court during jury deliberations. Although he asked this Court for additional time in which to file a complete transcript, and we ordered the preparation of a transcript at the State's expense, no transcript has been filed.

{¶ 10} "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, citations omitted. On the other hand, when conducting a manifest weight analysis, an appellate court "review[s] the entire record, weighs the evidence and all reasonable inferences, considers the credibility of

witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387.

{¶ 11} "[T]he failure to file a complete transcript or its equivalent is generally fatal to an appeal based on the manifest weight of the evidence." *State v. Sheck,* Licking App. No. 04-CA-20, 2005-Ohio-484, ¶8, citing *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 7; *Smart v. Nystrom* (1997), 119 Ohio App.3d 738, 741. While arguably there are cases in which manifest weight or sufficiency arguments might be sustained without a complete written transcript, that is not the case here, where we have been given only snippets of testimony from nine witnesses, amounting to only a little more than ten written pages from a three-day trial.

{¶ 12} When reviewing a claim of ineffective assistance of trial counsel, an appellate court reviews the adequacy of trial counsel's performance in light of all of the circumstances surrounding the trial. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Reversal is warranted only where a defendant demonstrates that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *State v. Bradley* (1989), 42 Ohio St.3d 136, 142.

{¶ 13} An ineffective assistance of counsel claim may not always require the filing of a complete written trial transcript. But when a criminal defendant argues that trial counsel should have objected to prosecutorial misconduct committed during the State's closing argument, he must at least provide this court with a complete written

transcript of that argument, not just four sentences from an argument lasting an hour or more. Similarly, to the extent that Barksdale argues that some of the prosecutor's questions were argumentative and amounted to declarations rather than questions, he provides us with only a couple of questions and answers taken out of the context in which they occurred.

{¶ 14} Because Barksdale has failed to comply with App.R. 9(A), we presume the regularity of the trial court proceedings. See, e.g., *State v. Smith,* Montgomery App. No. 20853, 2005-Ohio-5588, ¶10. Accordingly, both of his assignments of error are overruled.

III

{¶ 15} Both of Barksdale's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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GRADY, P.J., and DONOVAN, J., concur.

Copies mailed to:

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Hon. Timothy N. O'Connell