[Cite as *State v. Carroll*, 2016-Ohio-7218.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 15CA3506
vs.	:	
Sir Jeffrey Scott Carroll,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Lori J. Rankin, Chillicothe, Ohio, for appellant.[1]

Matthew S. Schmidt, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 9-23-16
ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. A jury found Sir Jeffrey Scott Carroll, defendant below and appellant herein, guilty of four counts of complicity to forgery, in violation of R.C. 2923.03. Appellant assigns the following error for review:

"THE CUMULATIVE EFFECT OF THE ERRORS MADE BY

TRIAL COUNSEL DENIED MR. CARROLL HIS

[1] Different counsel represented appellant during the trial court proceedings.

CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL."

{¶ 2} In April 2014, five individuals (Lyle Beeler, Kristopher Zimmerman, Jennifer Hutchison, Tera Stewart, and Justine[2] Pollock) cashed forged checks at two Chillicothe-area Kroger stores. Each check was made out to the respective individual in the amount of $735.13, and drawn on a check purportedly issued by CSA Staffing Agency. A subsequent investigation led law enforcement officials to believe that appellant asked the five individuals to cash the forged checks.

{¶ 3} On March 13, 2015, a Ross County grand jury returned an indictment that charged appellant with five counts of complicity to forgery. Appellant entered not guilty pleas.

{¶ 4} On September 2 and 3, 2015, the trial court held a jury trial. The state's first witness, Pollock, testified that on April 26, 2014, he had a conversation with appellant, during which appellant asked Pollock if Pollock would "be interested in payment for my name and address to cash a check." Pollock agreed. Pollock met with appellant the following day at a Walmart store parking lot. As Pollock spoke with appellant in the parking lot, Pollock observed additional checks inside an envelope sitting on appellant's lap. Pollock stated that after he received the check from appellant, Pollock went inside the Walmart store and attempted to cash the check, but was unable to cash the check at Walmart. Pollock testified that he and appellant then went to a Kroger grocery store to cash the check and Pollock successfully cashed the check. After cashing the check, Pollock met appellant in the parking lot. Pollock gave appellant all of the

[2] The indictment and the forged check spell Pollock's first name as "Justine." The trial transcript spells it as "Justin." We use the spelling as it appears in the indictment.

money he received from cashing the check, and appellant gave Pollock $200 in return. Pollock stated that in March 2015, he was indicted for forgery and subsequently pled guilty.

{¶ 5} On cross-examination, defense counsel questioned Pollock whether he went to the Lincoln Park Apartments between the time he left Walmart and the time he arrived at Kroger. Defense counsel implied that Pollock may have obtained the forged check from someone other than appellant—someone who lived at the Lincoln Park Apartments. Pollock stated, however, that he did not stop at the Lincoln Park Apartments between his stops at Walmart and Kroger.

{¶ 6} Tera Stewart testified that on April 27, 2014, appellant gave her a check to cash. Appellant advised her to go to Walmart or Kroger to cash the check. Stewart stated that she went to Kroger with Zimmerman, Hutchison, and "Reesy" (appellant's female friend) to cash the check. Stewart explained that Hutchison and Zimmerman also possessed checks that they had received from appellant. Stewart stated that Zimmerman cashed his check at the Western Avenue Kroger store. The group next went to the Bridge Street Kroger, where she and Hutchison cashed their checks. Stewart explained that after the three individuals cashed their checks, they went to Hutchison's residence. Once there, Stewart gave the money received from cashing the check to appellant, and in return he gave her $100 or $200.

{¶ 7} Stewart explained that in July 2014, Chillicothe Police Detective Shawn Rourke contacted her regarding the check that she cashed at the Bridge Street Kroger. Stewart informed the detective that appellant "was involved in [her] acquiring the check" and in cashing it. She later was charged with forgery and entered a guilty plea.

{¶ 8} On cross-examination, Stewart stated that "Reesy" handed her, Zimmerman, and Hutchison the checks. Stewart testified that she did not see appellant hand the checks to anyone.

She clarified, however, that appellant told Reesy to give the checks to them. Stewart explained that after she and Zimmerman cashed their checks, they gave the money to Reesy.

{¶ 9} On re-direct, Stewart explained that she and Beeler were with appellant when he instructed Reesy to give them the checks. Stewart testified that appellant "was standing right there with everyone else" and he "told [Reesy] to take us * * * to cash the checks." She reiterated that appellant asked them to cash the checks, but admitted that she did not know who physically handed the checks to Hutchison and Zimmerman.

{¶ 10} Jennifer Hutchison testified that Zimmerman asked her to cash a check in exchange for money. Later that same day, she met with appellant at her apartment. Hutchison stated that appellant claimed that a friend of his "was having trouble with a check" and that they needed help cashing a check. Hutchison explained that she was the only person who received a check during this conversation. She further stated, however, that Zimmerman "ended up getting one." Hutchison stated that she believed Zimmerman received the check from appellant. Hutchison testified that she, Zimmerman, Stewart, and "a girl driving," (i.e., "Reesy") went to the Western Avenue Kroger, and Zimmerman cashed his check. Next, they went to the Bridge Street Kroger, and she and Stewart cashed their checks. Hutchison stated that after she cashed her check, she handed the money to Zimmerman. She believes Zimmerman then gave it to Reesy. Hutchison explained that she received money in return, and although she could not recall the exact amount, she believes she received $150.

{¶ 11} Hutchison stated that when she first spoke with Detective Rourke, she informed him that she and Zimmerman "worked for the money." She lied, however, because she "was scared *

* * of getting in trouble." She later told the detective that appellant had asked for her help in cashing a check for a friend. She was charged with forgery and pled guilty.

{¶ 12} On cross-examination, Hutchison stated that even though she did not see Zimmerman with a check when he walked inside the Kroger store, she presumed he had a check because when he left the Kroger store, he had money. She additionally testified that she saw appellant hand Zimmerman a check.

{¶ 13} Michael Allen testified that he is the president of CSA Staffing Agency. He identified the checks cashed as forgeries. He stated that "the logos are completely wrong," "the fonts are wrong," and "the signatures are wrong."

{¶ 14} Chillicothe Police Detective Shawn Rourke testified that he investigated the forged checks. He spoke with Hutchison and Stewart in July 2014, and both implicated appellant. Five weeks later, both were indicted. In December 2014, Pollock, Beeler, and Zimmerman were indicted. All five later pled guilty.

{¶ 15} Detective Rourke explained that when he first spoke with Hutchison, she claimed that the check she cashed at the Bridge Street Kroger was payment for house cleaning. She also initially denied knowing Stewart.

{¶ 16} The detective testified that he obtained video surveillance footage from the Kroger stores and that he did not observe appellant in any of the videos. Defense counsel asked the detective if the name, "Alvin" came up during his investigation. The detective stated that during his interview, Zimmerman mentioned Alvin. Detective Rourke explained that he did not further investigate whether Alvin was involved, because he believed Alvin was a "middle man," and because he did not know Alvin's last name.

{¶ 17} After the state rested, appellant moved for a Crim.R. 29(A) judgment of acquittal with respect to the counts involving Zimmerman and Beeler. Appellant argued that the state did not present sufficient evidence that Zimmerman or Beeler committed a forgery. The trial court overruled appellant's motion as it pertained to Zimmerman, but sustained it as it related to Beeler. The court thus dismissed count one of the indictment.

{¶ 18} During closing arguments, defense counsel indicated that appellant did not challenge whether Zimmerman, Hutchison, Pollock, and Stewart committed forgery. Instead, defense counsel asserted that the state failed to establish, beyond a reasonable doubt, that appellant was complicit in cashing the forged checks. Defense counsel argued that the state lacked any physical evidence to connect appellant to the forged checks. He further challenged the credibility of the individuals who testified that appellant is the person who requested that they cash the forged checks. Defense counsel asserted that Stewart's testimony that she was with Beeler when appellant gave them the checks is not consistent with the evidence that Beeler cashed his check the day before Stewart cashed hers. Defense counsel additionally claimed that Hutchison's testimony was not credible and pointed out that her recollection of the events surrounding her receipt of the forged check differed from Stewart's recollection. Defense counsel further argued that the evidence suggested that Beeler, not appellant, was the mastermind of the check-cashing scheme. He noted that the evidence shows that Beeler cashed his check first as a test run, and then, once successful, Beeler recruited his brother (Zimmerman) and his and his brother's girlfriends (Stewart and Hutchison) to cash the checks. Defense counsel also argued that Pollock's testimony that he observed an envelope full of checks on appellant's lap was not credible. He noted that the evidence shows that Pollock cashed his check last, and queried, "How is it that Mr. Pollock could

see [appellant] with a handful of other checks when all of those checks had already been cashed the day before and that morning[?]"

{¶ 19} After hearing the evidence, the jury found appellant guilty of counts two through five. On September 23, 2015, the trial court sentenced appellant. The court observed that the jury found appellant guilty of counts two through five and that count one was dismissed. The court sentenced appellant to serve twelve months in prison for counts two and three, to be served concurrently to one another and concurrently to the sentence for counts four and five. The court sentenced appellant to serve twelve months in prison for counts four and five, to be served consecutively to each other. This appeal followed.

{¶ 20} In his sole assignment of error, appellant argues that trial counsel did not provide the effective assistance of counsel as guaranteed under the Sixth Amendment to the United States Constitution. Appellant claims that trial counsel performed deficiently in several respects, and that the cumulative effect of the alleged deficiencies deprived him of the effective assistance of counsel and a fair trial. Appellant contends that trial counsel performed ineffectively by failing to object to leading questions, to hearsay testimony, and to speculative testimony. Appellant specifically complains that trial counsel performed ineffectively by failing to object to (1) Detective Rourke's testimony that Zimmerman was the individual depicted in a still photograph cashing a check at the Western Avenue Kroger; (3) Detective Rourke's testimony that Zimmerman was convicted of forgery; and (3) "Hutchison's speculative testimony that Zimmerman had a check in his possession when he went into Kroger and that it was provided to him [appellant]." Appellant also asserts that trial counsel performed ineffectively during his cross-examination of Hutchison during which she stated that appellant gave Zimmerman a check. Appellant points out

that Hutchison stated on direct examination that she did not actually see appellant hand Zimmerman a check. Appellant claims that if trial counsel had not performed ineffectively, the jury would not have heard evidence that (1) an individual fitting Zimmerman's description appeared in a video still-shot cashing a check at the Western Avenue Kroger, (2) appellant, rather than Zimmerman, handed the check to Hutchison, (3) Zimmerman was convicted of forgery, and (4) Zimmerman went into the Western Avenue Kroger with a check. Appellant contends that if the foregoing evidence had not been introduced at trial, his Crim.R. 29 "motion for acquittal on the count naming Zimmerman would have been granted for the same reasons the motion was granted regarding the count involving Lyle Beeler."

{¶ 21} The state asserts that trial counsel did not perform deficiently. The state argues that trial counsel's decisions regarding hearsay evidence, speculative testimony, and leading questions constituted sound trial strategy. The state further contends that even if counsel performed deficiently, appellant cannot establish that the result of the trial would have been different without the alleged deficient performance.

A

INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD

{¶ 22} The Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has generally interpreted this provision to mean a criminal defendant is entitled to the "reasonably effective assistance" of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); accord Hinton v. Alabama, — U.S. —, 134 S.Ct. 1081, 1087-1088, 188 L.Ed.2d 1 (2014) (explaining that

the Sixth Amendment right to counsel means "that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence").

{¶ 23} To establish constitutionally ineffective assistance of counsel, a defendant must show (1) that his counsel's performance was deficient and (2) that the deficient performance prejudiced the defense and deprived the defendant of a fair trial. E.g., Strickland, 466 U.S. at 687; State v. Obermiller, — Ohio St.3d —, 2016-Ohio-1594,– N.E.3d —, ¶83; State v. Powell, 132 Ohio St.3d 233, 2012–Ohio–2577, 971 N.E.2d 865, ¶85. "Failure to establish either element is fatal to the claim." State v. Jones, 4th Dist. Scioto No. 06CA3116, 2008–Ohio–968, ¶14. Therefore, if one element is dispositive, a court need not analyze both. State v. Madrigal, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000) (stating that a defendant's failure to satisfy one of the elements "negates a court's need to consider the other").

1

Deficient Performance

{¶ 24} The deficient performance part of an ineffectiveness claim "is necessarily linked to the practice and expectations of the legal community: 'The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Padilla v. Kentucky, 559 U.S. 356, 366, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), quoting Strickland, 466 U.S. at 688; accord Hinton, 134 S.Ct. at 1088. "Prevailing professional norms dictate that with regard to decisions pertaining to legal proceedings, 'a lawyer must have "full authority to manage the conduct of the trial."'" Obermiller at ¶85, quoting State v. Pasqualone, 121 Ohio St.3d 186, 2009-Ohio-315, 903 N.E.2d 270, ¶24, quoting Taylor v. Illinois, 484 U.S. 400, 418, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988). Furthermore, "'[i]n any case presenting an ineffectiveness claim, "the

performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.'" Hinton, 134 S.Ct. at 1088, quoting Strickland, 466 U.S. at 688. Accordingly, "[i]n order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation." State v. Conway, 109 Ohio St.3d 412, 2006–Ohio–2815, 848 N.E.2d 810, ¶95 (citations omitted); accord Hinton, 134 S.Ct. at 1088, citing Padilla, 559 U.S. at 366; State v. Wesson, 137 Ohio St.3d 309, 2013–Ohio–4575, 999 N.E.2d 557, ¶81.

{¶ 25} Moreover, when considering whether trial counsel's representation amounts to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. Additionally, "[a] properly licensed attorney is presumed to execute his duties in an ethical and competent manner." State v. Taylor, 4th Dist. Washington No. 07CA11, 2008–Ohio–482, ¶10, citing State v. Smith, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Therefore, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were "so serious" that counsel failed to function "as the 'counsel' guaranteed * * * by the Sixth Amendment." Strickland, 466 U.S. at 687; e.g., Obermiller at ¶84; State v. Gondor, 112 Ohio St.3d 377, 2006–Ohio–6679, 860 N.E.2d 77, ¶62; State v. Hamblin, 37 Ohio St.3d 153, 156, 524 N.E.2d 476 (1988).

2

Prejudice

{¶ 26} To establish prejudice, a defendant must demonstrate that a reasonable probability exists that "'but for counsel's errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the outcome.'" Hinton, 134 S.Ct. at 1089, quoting Strickland, 466 U.S. at 694; e.g., State v. Short, 129 Ohio St.3d 360, 2011–Ohio–3641, 952 N.E.2d 1121, ¶113; State v. Bradley, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus. "'[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.'" Hinton, 134 S.Ct. at 1089, quoting Strickland, 466 U.S. at 695. Furthermore, courts may not simply assume the existence of prejudice, but must require the defendant to affirmatively establish prejudice. State v. Clark, 4th Dist. Pike No. 02CA684, 2003–Ohio–1707, ¶22; State v. Tucker, 4th Dist. Ross No. 01CA2592 (Apr. 2, 2002). As we have repeatedly recognized, speculation is insufficient to demonstrate the prejudice component of an ineffective assistance of counsel claim. E.g., State v. Jenkins, 4th Dist. Ross No. 13CA3413, 2014–Ohio–3123, ¶22; State v. Simmons, 4th Dist. Highland No. 13CA4, 2013–Ohio–2890, ¶25; State v. Halley, 4th Dist. Gallia No. 10CA13, 2012–Ohio–1625, ¶25; State v. Leonard, 4th Dist. Athens No. 08CA24, 2009–Ohio–6191, ¶68; accord State v. Powell, 132 Ohio St.3d 233, 2012–Ohio–2577, 971 N.E.2d 865, ¶86 (stating that an argument that is purely speculative cannot serve as the basis for an ineffectiveness claim).

B

FAILURE TO OBJECT

{¶ 27} First, we observe that " '[t]he failure to object to error, alone, is not enough to sustain a claim of ineffective assistance of counsel.'" State v. Fears, 86 Ohio St.3d 329, 347, 715

N.E.2d 136 (1999), quoting State v. Holloway, 38 Ohio St.3d 239, 244, 527 N.E.2d 831 (1988). A defendant must also show that he was materially prejudiced by the failure to object. Holloway, 38 Ohio St.3d at 244. Accord State v. Hale, 119 Ohio St.3d 118, 2008–Ohio–3426, 892 N.E.2d 864, ¶233.

{¶ 28} Additionally, tactical decisions, such as whether and when to object, ordinarily do not give rise to a claim for ineffective assistance. State v. Johnson, 112 Ohio St.3d 210, 2006–Ohio–6404, 858 N.E.2d 1144, ¶139–140. As the court explained in Johnson at ¶139–140:

> "[F]ailure to object to error, alone, is not enough to sustain a claim of ineffective assistance of counsel. To prevail on such a claim, a defendant must first show that there was a substantial violation of any of defense counsel's essential duties to his client and, second, that he was materially prejudiced by counsel's ineffectiveness. State v. Holloway (1988), 38 Ohio St.3d 239, 244, 527 N.E.2d 831. * * *
>
> [E]xperienced trial counsel learn that objections to each potentially objectionable event could actually act to their party's detriment. * * * In light of this, any single failure to object usually cannot be said to have been error unless the evidence sought is so prejudicial * * * that failure to object essentially defaults the case to the state. Otherwise, defense counsel must so consistently fail to use objections, despite numerous and clear reasons for doing so, that counsel's failure cannot reasonably have been said to have been part of a trial strategy or tactical choice. Lundgren v. Mitchell (C.A.6, 2006), 440 F.3d 754, 774. Accord State v. Campbell, 69 Ohio St.3d 38, 52–53, 1994–Ohio–492, 630 N.E.2d 339."

{¶ 29} In the case sub judice, after our review of the record we do not believe that appellant has shown that trial counsel's failure to object substantially violated any of counsel's essential duties to appellant or that counsel's failure to object materially prejudiced appellant's case. We first dispose of appellant's assertion that trial counsel performed ineffectively by failing to object to Detective Rourke's identification of the individual observed on the Western Avenue Kroger surveillance still-shot as Zimmerman and to his statement that Zimmerman was convicted of

forgery.[3] Here, it appears that trial counsel made a calculated, strategic decision not to challenge whether the individuals who cashed the checks, including Zimmerman, committed forgery. During opening statements and closing arguments, defense counsel conceded that Zimmerman, Hutchison, Stewart, and Pollock committed forgery. Thus, the absence of the detective's testimony identifying Zimmerman as the individual observed on the still-shot cashing a check at the Western Avenue Kroger and his testimony that Zimmerman was convicted of forgery would not have changed the result of the trial.

{¶ 30} Moreover, the circumstantial evidence shows that Zimmerman committed forgery. Stewart testified that Zimmerman received a check from appellant via Reesy. Both Hutchison and Stewart observed Zimmerman enter the Kroger store and return with cash. Stewart stated that after Zimmerman cashed his check, he handed the money to Reesy. Zimmerman cashed his check shortly before Hutchison and Stewart cashed their forged checks, and they all traveled in the same vehicle to reach the two Kroger stores where they cashed the forged checks. Considering all of the circumstances, we are unable to state that trial counsel's decision not to object to the detective's testimony identifying Zimmerman or his statement that Zimmerman was convicted of forgery fell below prevailing professional norms or materially prejudiced appellant's defense.

{¶ 31} We also reject appellant's assertion that trial counsel performed ineffectively by failing to object to Hutchison's speculative testimony that appellant gave Zimmerman a forged check and that Hutchison had this check in his possession when he entered the Western Avenue Kroger. Even if counsel performed deficiently by failing to object to Hutchison's testimony,

[3] The indictment alleged that appellant engaged in complicity to forgery under R.C. 2913.31(A), which states: "No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following: * * * (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged."

Stewart offered substantially similar testimony as described above; and appellant has not specifically claimed that trial counsel was ineffective for failing to object to Stewart's testimony. For this same reason, we reject appellant's conclusory argument that trial counsel was ineffective during his cross-examination of Hutchison.

C

LEADING QUESTIONS

{¶ 32} Appellant next complains that trial counsel performed ineffectively by failing to object to leading questions. Evid.R. 611(C) states:

> Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

"Evid.R. 611(C) does not preclude the use of leading questions on direct examination; instead, the rule provides that 'it is within the trial court's discretion to allow leading questions on direct examination.'" State v. Williams, 4th Dist. Jackson No. 15CA3, 2016–Ohio–733, ¶34, quoting State v. Jackson, 92 Ohio St.3d 436, 449, 751 N.E.2d 946 (2001). Accordingly, "the failure to object to leading questions does not constitute ineffective assistance of counsel." Id., quoting Jackson, 92 Ohio St.3d at 449, and citing State v. Stairhime, 3d Dist. Defiance No. 4–13–06, 2014–Ohio–1791, ¶46 (stating that "we cannot find that any failure to object to any leading questions would rise to the level of ineffective assistance of counsel"). Consequently, we reject appellant's claim that trial counsel performed ineffectively by failing to object to leading questions.

D

CUMULATIVE INEFFECTIVENESS

{¶ 33} Generally, under the doctrine of cumulative error, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of [the] numerous instances of trial court error does not individually constitute cause for reversal." State v. Garner, 74 Ohio St.3d 49, 64, 656 N.E.2d 623 (1995); State v. DeMarco, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987), paragraph two of the syllabus. When a defendant asserts trial counsel's cumulative errors deprived him of a fair trial, if none of the individual claims of ineffectiveness has merit, the defendant "cannot establish a right to relief simply by joining those claims together." State v. Dean, 146 Ohio St.3d 106, 2015-Ohio-4347, ¶296, citing State v. Mammone, 139 Ohio St.3d 467, 2014–Ohio–1942, 13 N.E.3d 1051, ¶173; accord State v. Hartman, 2nd Dist. Montgomery No. 26609, 2016-Ohio-2883, ¶¶60-62; State v. Scott, 8th Dist. Cuyahoga No. 100980, 2014-Ohio-4925, ¶44.

{¶ 34} In the case sub judice, we determined that none of appellant's ineffectiveness claims have merit. He therefore cannot claim that the cumulative effect of trial counsel's alleged errors deprived him of a fair trial.

{¶ 35} We further observe that defense counsel fully participated throughout the trial, challenged the state's witnesses' credibility through cross-examination, and successfully pursued a Crim.R. 29(A) judgment of acquittal regarding the first count of the indictment. Even if defense counsel did not perform as perfectly as appellant would have preferred, the Sixth Amendment right to counsel does not guarantee an error-free, perfect trial, but simply, a fair trial, i.e., one whose result was reliable. See In re Smith, 4th Dist. Ross No. 01CA2599 (Dec. 12, 2001), quoting United

States v. Hasting, 461 U.S. 499, 508-509, 103 S.Ct. 1974 (1983)("'there can be no such thing as an error-free, perfect trial, and * * * the Constitution does not guarantee such a trial.'"); State v. Combs, 62 Ohio St.3d 278, 290, 581 N.E.2d 1071, 1081 (1991), quoting Engle v. Isaac, 456 U.S. 107, 134, 102 S.Ct. 1558, 1575, 71 L.Ed.2d 783, 804 (1982) ("However, the Constitution does not promise an error-free trial. '[T]he Constitution guarantees criminal defendants only a fair trial and a competent attorney. It does not insure that defense counsel will recognize and raise every conceivable constitutional claim.'"). Considering the entire record, we are unable to conclude that appellant was deprived of a reliable trial.

{¶ 36} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.