

[Cite as *State v. Farmer*, 2002-Ohio-7186.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

KEVIN FARMER

Defendant-Appellant

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JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. Julie A. Edwards, J.

Hon. John F. Boggins, J.

Case No. 02CA47

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 01CR156

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 23, 2002

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

RACHELLE J. PELOQUIN
20 South Second Street
Newark, OH 43055

ELIZABETH N. GABA
1021 South High Street
Columbus, OH 43206

Farmer, P.J.

{¶1} On April 13, 2001, the Licking County Grand Jury indicted appellant, Kevin Farmer,¹ on two counts of child endangering in violation of R.C. 2919.22. Said charges arose from incidents involving two children, Kristen Mauller (Count 1) and Shelby Gunn (Count 2).

{¶2} A jury trial commenced on March 14, 2002. At the close of the state's case-in-chief, the trial court dismissed Count 1 of the indictment pursuant to Crim.R. 29. The jury found appellant guilty of Count 2. By judgment entry filed April 9, 2002, the trial court sentenced appellant to sixty days in jail.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows.

I

“A DEFENDANT RECEIVES THE INEFFECTIVE ASSISTANCE OF COUNSEL
WHEN THAT COUNSEL FAILS TO CHALLENGE AN INVOLUNTARY
STATEMENT GAINED FROM A DEFENDANT IN VIOLATION OF THAT
DEFENDANT’S FIFTH AND SIXTH AMENDMENT RIGHTS UNDER THE
UNITED STATES CONSTITUTION.”

I

{¶4} Appellant claims he was denied the effective assistance of trial counsel

¹No relation to this writer.

because his trial counsel failed to file a motion to suppress his statement to police. We disagree.

{¶5} The standard this issue must be measured against is set out in *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraphs two and three of the syllabus, certiorari denied (1990), 497 U.S. 1011. Appellant must establish the following:

{¶6} “2. Counsel's performance will not be deemed ineffective unless and until counsel's performance is proved to have fallen below an objective standard of reasonable representation and, in addition, prejudice arises from counsel's performance. (*State v. Lytle* [1976], 48 Ohio St.2d 391, 2 O.O.3d 495, 358 N.E.2d 623; *Strickland v. Washington* [1984], 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, followed.)

{¶7} “3. To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different.”

{¶8} Appellant argues his statements made to Detective Eric McCort of the Licking County Sheriff's Office and Detective Eric Rardain of the Heath Police Department were not voluntary.²

{¶9} Detective McCort was notified of an allegation of child abuse and he interviewed the victim, Kristen Mauller, her mother, Wendy Bradfield, and appellant. T. at 91-93, 96-97. Thereafter, Detective McCort was notified of the possible abuse of a younger child, Shelby Gunn. T. at 97-98. Upon investigation, Detective McCort observed

²The complained of statements concern Count 2 only.

a “discoloration, redness to I believe it was her left hand, a circular pattern on her palm.” T. at 98. When interviewed by Detective McCort, appellant stated the red mark was caused by an accidental cigarette burn. T. at 99-100. When asked to submit to a truth verification test (computerized voice stress analyzer), appellant agreed to submit to one. T. at 100-101. On February 14, 2001, appellant appeared at the Heath Police Department for the test. T. at 101, 114. Appellant appeared without being reminded and in fact, arrived early. T. at 109-110. All indications point to the fact that appellant appeared at the police station voluntarily. T. at 110, 112. Prior to taking the test, appellant admitted the allegations, and agreed to give a statement to Detective McCort. T. at 101-103, 115, 118-119. After giving the statement, appellant was not arrested and was free to leave. T. at 112.

{¶10} Appellant testified at trial and admitted to an accidental burn to Shelby. T. at 152-157. Appellant denied being coerced into making his statement to Detective McCort. T. at 158.

{¶11} Our review is limited to the evidence presented at trial and is not as fully developed as it would be at a suppression hearing. It is clear that appellant voluntarily appeared at the police station and gave an incriminating statement prior to the computer voice stress analyzer test. He then agreed to give Detective McCort a statement. Thereafter, he was free to leave.

{¶12} Given these facts, it is clear appellant’s statement was noncustodial and voluntary. Upon review, we find no deficiency in defense counsel’s performance. Defense counsel has no duty or obligation to file a motion to suppress when there are no meritorious issues to argue. *State v. Steel* (1982), 8 Ohio App.3d 137.

{¶13} Appellant’s argument that he was coerced into taking the computer voice

stress analyzer test is belied by the evidence as appellant voluntarily appeared at the police station and admitted during trial that he was not coerced.

{¶14} The sole assignments of error is denied.

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{¶15} The judgment of the Court of Common Pleas of Licking County, Ohio is
hereby affirmed.

By Farmer, P.J.

Edwards, J. and

Boggins, J. concur.

JUDGES

SGF/db 1209

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FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KEVIN FARMER

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 02CA47

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed.

JUDGES