**[Cite as *State v. Beach*, 2012-Ohio-2338.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio — Court of Appeals No. H-11-005

Appellee — Trial Court No. CRI-2010-0798

v.

Clifford W. Beach — **DECISION AND JUDGMENT**

Appellant — Decided: May 25, 2012

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Reese M. Wineman, for appellant.

* * * * *

**HANDWORK, J.**

**{¶ 1}** This appeal is from the March 23, 2011 judgment of the Huron County Court of Common Pleas, which sentenced appellant, Clifford W. Beach, after he was convicted by a jury of aggravated murder, murder, and gross abuse of a corpse. Upon

consideration of the assignments of error, we affirm the decision of the lower court. Appellant asserts the following assignments of error on appeal:

> ASSIGNMENT OF ERROR NO. 1
>
> THE TRIAL COURT ALLOWED THE VIOLATION OF THE DEFENDANT'S FOURTH AMENDMENT RIGHTS OF THE CONSTITUTION IN ITS DECISION RENDERING THE DEFENDANT'S MOTION TO SUPPRESS "NOT WELL TAKEN" WHEN IT ALLOWED THE ILLEGAL RE-ENTRY BY THE BELLEVUE POLICE DEPARTMENT INTO THE BEACH RESIDENCE AFTER THE CONFIRMATION OF THE VICTIM'S DEATH AND THE DETERMINATION THAT NO OTHER INDIVIDUALS WERE ON THE SCENE.
>
> ASSIGNMENT OF ERROR NO. 2
>
> THE SECOND PRONG OF THE TRIAL COURT'S HOLDING CONCERNING THE STATEMENTS MADE TO CAPTAIN JOHNSON, ONCE AGAIN, IGNORES CERTAIN PERTINENT FACTS AND CONSTITUTED A VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHT UNDER THE FIFTH AMENDMENT. THE FOLLOWING STATEMENT GIVEN TO CAPT. JOHNSON, WHICH CONTAINED NO EXPLICIT WAIVER OF THE DEFENDANT'S RIGHT TO REMAIN SILENT, CONSTITUTED A FURTHER

VIOLATION OF THE DEFENDANT'S FIFTH AMENDMENT RIGHTS. THE COURT FAILED TO RECOGNIZE THAT, IN THE RECORD OF THE HEARING AND, AS INDICATED IN THE STATEMENT OF FACTS, SGT. KAUFMAN TESTIFIED THAT CLIFFORD BEACH, WHO WAS IN A WHEEL CHAIR, WAS NOT FREE TO LEAVE FOLLOWING HIS INTERVIEW OF WILMA TOWNSEND AND HIS OBSERVATIONS OF BLOOD AND, WHAT HE BELIEVED TO BE HUMAN TISSUE ON CLIFFORD BEACH'S PERSON.

ASSIGNMENT OF ERROR NO. 3

THE ADMISSION OF THE PHOTOGRAPHS TAKEN DURING THE AUTOPSY OF THE VICTIM'S BODY CONSTITUTED AN ABUSE OF DISCRETION BY THE TRIAL COURT BASED UPON THE GRUESOME NATURE OF THE PHOTOGRAPHS AND BASED UPON THE FACT THAT, PRIOR TO THE INTRODUCTION OF THE PHOTOGRAPHS, THE CORONER'S VERDICT WAS RENDERED IN TESTIMONY AND A PATHOLOGIST FROM THE LUCAS COUNTY CORONER'S OFFICE SUBMITTED A MULTI-PAGE REPORT INDICATING WHAT HER FINDINGS WERE. THE INTRODUCTION OF THE PHOTOGRAPHS IN THIS CASE WAS CUMULATIVE AND, IN FACT, HIGHLY INFLAMMATORY.

ASSIGNMENT OF ERROR NO. 4

THE JURY'S VERDICT IN FINDING THAT THE DEFENDANT WAS GUILTY OF AGGRAVATED MURDER BASED UPON PRIOR CALCULATION AND DESIGN WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

ASSIGNMENT OF ERROR NO. 5

THE DEFENDANT ALLEGES THAT THE SENTENCE IMPOSED BY THE COURT ON MARCH 22, 2011, CONSTITUTED AN ABUSE OF DISCRETION AND WAS UNREASONABLE. BASED UPON THE FINDINGS OF FACT MADE BY THE JUDGE AT SENTENCING, THE HISTORY OF THE DEFENDANT, AND THE PSYCHIATRIC EVIDENCE BEFORE THE TRIAL COURT. [sic]

**{¶ 2}** Appellant was indicted in a multi-count indictment alleging violations of R.C. 2903.01(A), R.C. 2929.02 and R.C. 2929.03(A)(1), aggravated murder, and R.C. 2903.02(A), murder, both first degree felonies, and R.C. 2927.01(B), gross abuse of a corpse, a fifth degree felony. Appellant sought to suppress the evidence obtained from a search of his home and his statements to the police. The motion was denied by the trial court. Following a jury trial, appellant was convicted of all three charges and sentenced.

**{¶ 3}** Appellant's first two assignments of error relate to the denial of his motion to suppress the evidence seized during a search of his home and his statements made to the police. During a motion to suppress hearing, the trial court acts as the trier of fact. The trial court alone weighs the evidence and determines the credibility of the witnesses.

Therefore, the reviewing court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶ 50, and *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996), distinguished on other grounds by *State v. Davis*, 76 Ohio St.3d 107, 116-117, 666 N.E.2d 1099 (1996). Accepting the supported factual findings as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether these facts met the appropriate legal standard. *A.J.S.*, *supra*; *State v. DePew*, 38 Ohio St.3d 275, 277, 528 N.E.2d 542 (1988).

**{¶ 4}** The following evidence was submitted at the motion to suppress hearing. Officer Kaufman, a Bellevue police officer, testified that he responded to a call at 9:00 a.m. on August 16, 2010. Mrs. Townsend had called the police to report that when she had arrived at appellant's residence to transport him to a medical appointment, he told her that she could not come in because he had killed his wife and that she should call 911. Mrs. Townsend was not certain whether to believe appellant or not, and she called the police to report appellant's statement. Officer Kaufman, who was familiar with appellant because of prior arrests on misdemeanor charges, was not sure whether to believe the statement because appellant was known to exaggerate and the officer thought Mrs. Beach was already deceased.

**{¶ 5}** As the officer approached the back door of the Beach home, he saw the inner door was open and appellant seated in his wheelchair near the screened door. The officer believed that he opened the screened door as he asked appellant why he asked for the

police to be called. Appellant did not object to the officer coming into the home, and he told the officer that he had killed his wife. After the officer opened the screened door, he could see appellant more clearly and noticed that appellant was covered in blood and tissue. Fearful of whether appellant might be armed, the officer asked appellant how he had killed his wife. When appellant did not answer, the officer then asked him whether he had shot his wife. Appellant responded that he had beaten her to death. Officer Kaufman then removed appellant from the home and had another officer watch appellant outside the home while Officer Kaufman entered the home briefly to check on Mrs. Beach. He found her in a recliner and she did not appear to be breathing. In plain view, he saw knives and gardening tools. He briefly scanned the other rooms to ensure that no one else was present and then left the home. Officer Kaufman contacted his superior officer, Captain Johnson, to report the situation. A short time later, an EMS team arrived and one paramedic entered the home with Officer Kaufman to verify that Mrs. Beach was already deceased. Appellant was taken to the hospital because of what appeared to be self-inflicted wounds.

**{¶ 6}** When Captain Johnson arrived at 9:15 a.m., he and Officer Kaufman entered the premises at 9:23 a.m. to ensure the Officer Kaufman had handled the situation properly. No evidence was removed from the home. Captain Johnson reported that they were in the home three minutes. Captain Johnson then directed an officer to read appellant his Miranda rights in case he started talking. The officers secured the premises. Captain Johnson left at 10:11 a.m. to go to the hospital and record appellant's statement.

After hearing the statement, he sought a search warrant. Captain Johnson read appellant his rights again and asked if he understood them, but he never asked appellant if he was waiving his rights.

**{¶ 7}** Dr. Harwood testified that he was called between 9:30 a.m. and 10:00 a.m. He left his practice between 10:30 a.m. and 11:00 a.m. to go to the scene. He entered the premises along with Mr. McDowell, an investigator from the prosecutor's office, for a short period of time. Dr. Harwood asserted that he did not search for evidence, but only observed Mrs. Beach to determine a time of death. He saw blood in the kitchen where appellant had been sitting and Mrs. Beach in a recliner in the living room. He had been told by an officer that the incident may have happened the prior evening around 7:00 p.m. Dr. Harwood observed the body and confirmed that the condition of the body would be consistent with that time of death. Dr. Harwood left the scene and waited by his car until the Ohio Bureau of Criminal Investigations ("BCI") investigators arrived between 12:30 p.m. and 1:00 p.m. He reentered the premises with the BCI investigators after a search warrant had been obtained.

**{¶ 8}** In his first assignment of error, appellant argues that the trial court violated appellant's rights under the Fourth, Fifth, and Sixth Amendments to the United States Constitution and the Constitution of the State of Ohio when it denied appellant's motion to suppress any evidence obtained from his residence because the Bellevue police entered his home, without a warrant, approximately two hours after the home had been secured as a crime scene. Furthermore, appellant alleges that any warrant obtained was the result of

evidence observed during the unreasonable search of appellant's home. In his reply brief, appellant indicates that the evidence which should have been suppressed was the photographs of the scene and the coroner's findings that were needed for the pathologist to determine the cause of the victim's death.

**{¶ 9}** The Fourth Amendment to the U.S. Constitution protects individuals against unreasonable searches and seizures. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). This privilege is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Generally, the Ohio Constitution, Article I, Section 14, has been construed to contained an identical privilege, *State v. Murrell*, 94 Ohio St.3d 489, 493, 764 N.E.2d 986 (2002), and *State v. Robinette*, 80 Ohio St.3d 234, 238-239, 685 N.E.2d 762 (1997). If a defendant can demonstrates that his Fourth Amendment rights were violated by an unreasonable warrantless search, any evidence obtained in the search cannot be submitted as evidence by the prosecution. *Weeks v. United States*, 232 U.S. 383, 398, 34 S.Ct. 341, 58 L.Ed. 652 (1914); *Mapp v. Ohio*, 367 U.S. 643, 657, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); and *Slough v. Lucas Cty. Sheriff*, 174 Ohio App.3d 488, 2008-Ohio-243, 882 N.E.2d 952 ¶ 27 (6th Dist.).

**{¶ 10}** A warrantless search must be "measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). Therefore, there are no bright-line rules and each case must turn on its facts. *Robinette, supra*, and *Florida v. Royer*, 460 U.S. 491, 506, 103 S.Ct. 1319, 75

L.Ed.2d 229 (1983). While there is a presumption that a warrantless search is unreasonable, there are a few judicially-recognized, specific exceptions. *State v. Kessler*, 53 Ohio St.2d 204, 207, 373 N.E.2d 1252 (1978). In the case before us, the prosecution alleges that the emergency-aid exception to the warrant requirement applies in this case. This exception permits a police officer to enter a home to render emergency assistance where he has an "objectively reasonable basis for believing" that a person needs his assistance. *Michigan v. Fisher*, ––U.S. ––––, 130 S.Ct. 546, 548, 175 L.Ed.2d 410 (2009). This exception is also identified as the exigent circumstances exception. "An exigent circumstance is one that prompts police officers to believe either that a person in the home is in need of immediate aid to prevent a threat to life or limb, or that immediate entry is necessary to stop the imminent loss, removal or destruction of evidence or contraband." *State v. Hatcher*, 1st Dist. No. C-980938, 1999 WL 682630, *3, citing *Mincey v. Arizona*, 437 U.S. 385, 392-393, 98 S.Ct. 2408 (1978).

**{¶ 11}** Appellant concedes that Officer Kaufman and the EMS paramedic had a legitimate reason for entering appellant's home under the emergency-aid exception. While legally in the home, Officer Kaufman observed in plain view knives and tools near Mrs. Beach's body and her mortal wounds. Captain Johnson's view of the premises a short time afterward accomplished nothing more than to confirm Officer Kaufman's report and ensure the officer had properly responded to the situation. The captain's affidavit for a warrant was based upon the statements of Mrs. Townsend, Officer Kaufman's initial findings that were in plain view upon entering the home, and

appellant's statements made to Captain Johnson at the hospital. We find, therefore, that Captain Johnson's limited search of the home was reasonable.

**{¶ 12}** Appellant also argues that his constitutional rights were violated by the subsequent entry into the home later that morning by the prosecutor's investigator and the coroner.

**{¶ 13}** There is no general crime scene exception to the warrant requirement. *Flippo v. West Virginia*, 528 U.S. 11, 14, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999). While the coroner has jurisdiction over the body of a deceased person when the death occurs as a result of suspicious or unusual circumstances or the person is unknown, R.C. 313.11 and R.C. 313.12, there is no statute or common law exception justifying the coroner's investigation of the death of a person without compliance with the warrant requirement of the Fourth Amendment of the United States Constitution. *State v. Slagter*, 8th Dist. No. 76459, 2000 WL 1594096, *10 (Oct.26, 2000), Kilbane, J., dissenting in part and concurring in part.

**{¶ 14}** In the case before us, the responding officer and his captain were able to determine that a crime had occurred in this case based upon appellant's statements and their observations of Mrs. Beach's extensive wounds and the knives and tools surrounding her body. We find no justification for the prosecutor's investigator or the coroner to enter the premises once the responding officer and his superior have assessed the situation and secured the premises.

**{¶ 15}** Nonetheless, we find that the subsequent scan of the scene by the prosecutor's investigator and the coroner did not extend the scope of the original reasonable and limited search of the home. All of the evidence in plain view had already been observed by Officer Kaufman. Plus, the warrant was obtained without disclosure of the fact that there were subsequent entries into the home. Therefore, we find that there was no evidence which was obtained as a result of an unreasonable search. Appellant's first assignment of error is not well-taken.

**{¶ 16}** In his second assignment of error, appellant argues that his Fifth Amendment rights were violated when he was questioned while he was in custody without having been notified of his Miranda rights or expressing a waiver of his rights. Appellant first argues that he was in custody after Officer Kaufman learned that appellant had confessed to Mrs. Townsend that he had killed his wife, appellant himself told the officer that he had killed his wife, and the officer observed appellant covered with blood and tissue. Because Officer Kaufman failed to read appellant his Miranda rights prior to asking him any more questions, appellant argues that the statements he made to Officer Kaufman about how he killed his wife were inadmissible at trial.

**{¶ 17}** In order for self-incriminating statements by a defendant to be admissible, Miranda warnings must have been given before the police question a suspect in a custodial setting. *Miranda v. Arizona*, 384 U.S. 436, 478, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). "[C]ustodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action

in any significant way." *Id*. at 444. Otherwise, the defendant's incriminating statements made during a custodial interrogation are admissible only if the prosecution can establish that the defendant knowingly, voluntarily, and intelligently waived his or her Fifth Amendment privilege against self-incrimination, which is made applicable to the states through the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 8, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). An exception has been made when the interrogation was done under exigent circumstances where the public's safety was involved. *New York v. Quarles*, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984). When the admissibility of self-incriminating statements by the accused are challenged, the burden is upon the prosecution to prove by a preponderance of the evidence that the police complied with *Miranda, supra,* and that the defendant knowingly, intelligently, and voluntarily waived his or her rights and voluntarily made the statements to the police. *Id*. at 478.

**{¶ 18}** In this case, Officer Kaufman quickly determined that appellant had been involved in some type of altercation and that he needed to be secured while the officer checked on Mrs. Beach. Appellant argues that the officer did not need to question appellant as to how he had killed his wife. We disagree. Since appellant was covered in blood and tissue and had cuts on himself, it was imperative that the officer determine quickly what type of weapon appellant had used and might still possess. The officer's further questioning of appellant was limited to this issue alone. We find that the exigent circumstances exception is applicable in this case.

**{¶ 19}** Second, appellant argues that while it is clear that appellant expressly waived his right to counsel, there was no evidence that appellant had waived his Fifth Amendment right to remain silent after Captain Johnson had read appellant his Miranda warnings.

**{¶ 20}** Before Captain Johnson met with appellant to question him, another officer had already read appellant his rights and Captain Johnson also informed appellant of his rights just prior to taking his statement. Appellant did not sign a written wavier of his rights. Captain Johnson did not asked appellant if he waived each individual right. However, appellant stated that he understood his rights and did not want an attorney or time to secure one prior to the interview. Appellant then proceeded to freely talk to the captain.

**{¶ 21}** While an express written or oral statement of waiver is strong evidence that a defendant waived his right to remain silent, a court may infer from the totality of the circumstances that a defendant voluntarily, knowingly, and intelligently waived his rights. *State v. Lather*, 110 Ohio St.3d 270, 2006-Ohio-4477, 853 N.E.2d 279 ¶ 9 (2006); *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). Conversely, silence and ambiguous statements do not invoke such rights. *Berghuis v. Thompkins*, ___ U.S. ___, 130 S.Ct. 2250, 2261, 176 L.Ed.2d 1098 (2010). There is also no specific requirement placed upon the police to ensure that the defendant has effectively waived his right to remain silent such as by asking the defendant whether he wished to waive or invoke his Miranda rights, *Davis v. United States*, 512 U.S. 452, 461-

462, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), or even if he understood the rights that were read to him. *Lather*, *supra*, ¶ 13.

**{¶ 22}** Instead, the court must consider whether the totality of the circumstances establish the waiver was: 1) "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and 2) "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Berghuis, supra,* at 2260, citing *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). Therefore, the court must consider the individual facts and circumstances of each case and the actions and words of the defendant. *North Carolina, supra*.

**{¶ 23}** In this case, the trial court reasoned that it was reasonable to infer that appellant had waived his right to remain silent. We agree. Appellant initiated the police investigation by asking Mrs. Townsend to call the police because he had killed his wife. Appellant told the first officer on the scene that he had killed his wife. Later that day, appellant was twice read his rights prior to being questioned about the details of the murder. At that time, he acknowledged that he understood his rights and orally waived his right to counsel. He then immediately proceeded to answer Captain Johnson's questions without reservation. All of the circumstances implicitly indicated that appellant waived his right to remain silent. Appellant's second assignment of error is not well-taken.

**{¶ 24}** In his third assignment of error, appellant argues that the trial court erred by admitting into evidence the photographs taken during the autopsy of Mrs. Beach. Appellant contends that the gruesome nature of the photographs made them highly inflammatory and the fact that there was other evidence of the cause of death justified a finding that the photographs were cumulative evidence and, therefore unnecessary in light of their prejudicial effect.

**{¶ 25}** Relevant evidence may be excluded if its prejudicial effect (i.e., unfair prejudice, confusion of the issues, misleading of the jury, etc.) is not outweighed by the probative value of the evidence. Evid.R. 403 and *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596 ¶ 86. The "admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987), paragraph two of the syllabus. Even gruesome photographs may be admissible if the trial court determines that the photographs would provide useful information to the jury and their probative value outweighs any prejudicial effect. *State v. Maurer*, 15 Ohio St.3d 239, 264, 473 N.E.2d 768 (1984) and *State v. Woodards*, 6 Ohio St.2d 14, 25, 215 N.E.2d 568 (1966).

**{¶ 26}** In the case before us, the prosecution presented 13 photographs depicting some of the 100 injuries Mrs. Townsend suffered before and after her death. They are gruesome for the simple reason that the injuries she suffered were gruesome. The coroner utilized the photographs to aid the jury in understanding her testimony about the type of wounds caused by each type of instrument. Furthermore, appellant's defense was

that he had intended to destroy furniture and had no intent or memory of harming his wife. Therefore, the photographs were necessary to show the jury the severity of the wounds that words alone could not convey. While the photographs are gruesome, the nature of how the injuries were inflicted was a critical issue to establish that appellant violently attacked his wife and abused Mrs. Beach's corpse in an attempted amputation of her limbs.

**{¶ 27}** We also find appellant's reliance upon our holding in *State v. Robinson*, 6th Dist. No. 838, 1974 WL 184929, *3 (Nov. 1, 1974) is misplaced. In that case, we held the trial court abused its discretion by admitting into evidence autopsy photographs that had minimal probative value in light of other evidence of the identity of the victim and the cause of death. We also found the photographs would be highly prejudicial to the defendant because of their gruesome nature. *Id.* However, that case dealt with a situation where the evidence of guilt was based largely upon circumstantial evidence and the danger of prejudice was greater. In the case before us, there was direct evidence of guilt and the photographs were needed to more clearly demonstrate appellant's intentions, the intensity of the injuries, and the timing of the injuries (whether they were inflicted before or after death).

**{¶ 28}** Therefore, we find appellant's third assignment of error not well-taken.

**{¶ 29}** In his fourth assignment of error, appellant argues that the jury's finding that appellant was guilty of aggravated murder based upon prior calculation and design was contrary to the manifest weight of the evidence. A challenge to the weight of the

evidence questions whether the greater amount of credible evidence was admitted to support the conviction than not. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The standard for determining whether a conviction is contrary to the manifest weight of the evidence is whether the appellate court finds that 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." *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983). *See also State v. Smith*, 80 Ohio St.3d 89, 114, 684 N.E.2d 668 (1997). In making this determination, the court reviews the entire record, weighs the evidence and all reasonable inferences therefrom, and considers the credibility of witnesses. *Martin, supra*.

**{¶ 30}** Appellant argues in his brief in support of this assignment of error, however, that there was insufficient evidence to support his conviction because there was insufficient evidence to establish the element of prior calculation and design. The term "'sufficiency' 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." *Thompkins* at 386. Even if there is sufficient evidence to support the verdict, a court may decide that the verdict is against the weight of the evidence. *State v. Robinson*, 162 Ohio St. 486, 487, 124 N.E.2d 148 (1955). In this case, we address only the manifest weight argument because that was the only issue raised by appellant in his assignment of error and an analysis of manifest

weight goes beyond the question of the sufficiency of the evidence. *State v. Peterson*, 8th Dist. No. 88248, 2007-Ohio-1837, ¶ 19, citing *Thompkins*, *supra* at 388.

**{¶ 31}** Appellant was charged with aggravated murder, murder, and gross abuse of a corpse. R.C. 2903.01(A) specifies that the elements for aggravated murder: "No person shall purposely, and with prior calculation and design, cause the death of another * * *." The Ohio Supreme Court first interpreted the phrase "prior calculation and design," as used in R.C. 2903.01, in *State v. Cotton*, 56 Ohio St.2d 8, 381 N.E.2d 190 (1978), paragraphs one, two and three of the syllabus. The court held that "[i]n a capital case prosecuted under R.C. 2903.01(A), 'prior calculation and design' is a more stringent element than the 'deliberate and premeditated malice' which was required under prior law." *Id*. at paragraph one of the syllabus. The court determined that this standard requires more than an instantaneous deliberation. *Id*. at paragraph two of the syllabus. But, the court also held there only need be "sufficient time and opportunity for the planning of an act of homicide," which can be proven by the "circumstances surrounding the homicide [which] show a scheme designed to implement the calculated decision to kill. *Id*. at paragraph three of the syllabus. In *State v. Taylor*, 78 Ohio St.3d 15, 20, 676 N.E.2d 82 (1997), the court reconsidered the type of evidence necessary to establish the "prior calculation and design" element in short-lived, emotional circumstances and determined that there cannot be any bright-line test to make the determination. *Id*. Instead, the determination of the existence of this element must be based upon the facts of the case. *Id*.

**{¶ 32}** In the case before us, the facts submitted at trial were as follows. Wilma Townsend, a friend of the Beaches; Officer Kaufman, the responding officer; Officer Nunez, the second responding officer; and one of the responding EMS paramedics testified about the initial discovery that Mrs. Beach had been murdered. On August 13, and in the evening of August 14, 2010, Mrs. Townsend had delivered groceries to Mrs. Beach because of her poor health and nothing seemed unusual. Whenever Mrs. Townsend came to the Beach home, she would knock to announce her arrival and enter the home. However, when Mrs. Townsend arrived at the Beach home on August 16th in order to take appellant to a medical appointment, no one answered her knock and the door was locked. Mrs. Townsend had previously called the Beaches at 8:20 a.m. to inform them that she would be late, but no one answered the telephone. She called the home again while she was at the home and could hear the phone ringing. She knocked again, but no one answered. When she knocked on the front door again, she heard appellant responded with "yeah," and Ms. Townsend asked him to let her in. She walked around the house to the back door by which she usually entered the home. She opened the screen and waited for appellant to unlock the door. He opened the door just enough that she could see his face. He told her not to come in and to call 911 because he had killed his wife. Mrs. Townsend tried to push the door open, but appellant would not allow her to enter and repeated his statement. Mrs. Townsend noted that appellant appeared to have just awakened. Mrs. Townsend called the police.

**{¶ 33}** Officer Kaufman arrived about five minutes later. He thought Mrs. Beach was already deceased, but Mrs. Townsend corrected him. Officer Kaufman recalled having been to the home on previous occasions due to misdemeanor charges. Mrs. Townsend recalled the officer asking her if there were any guns in the house, but the officer did not recall asking her this question. Officer Kaufman knocked on the screen door and started to open it and walk inside. Appellant had opened the inner door and was sitting in his wheelchair in the center of the utility room. Mrs. Townsend testified that she walked in with the officer, but Officer Kaufman thought she waited in the driveway. Officer Kaufman asked appellant what was going on and why he had been called. Both the officer and Mrs. Townsend testified that they could see cuts on appellant's arms and blood all over him. Officer Kaufman also observed tissue on appellant's clothes and arms. Appellant told the officer that he had killed his wife. Mrs. Townsend recalled Officer Kaufman asking appellant if he had a gunshot wound on his arm, but Officer Kaufman testified that he asked appellant if he had shot her because the officer was worried that appellant might have a handgun hidden in the chair. Officer Kaufman recalled that appellant shook his head "no" and said he had beaten her to death. Officer Kaufman pushed appellant in his wheelchair outside and Mrs. Townsend testified that she followed.

**{¶ 34}** After appellant was secured, Officer Kaufman checked on Mrs. Beach. He found her lying in a recliner with many devastating wounds. She was partially covered with a sheet or light blanket. The police found garden tools stacked just behind the head

of the recliner. The coroner examined Mrs. Beach a short time later and opined that she had died sometime within the prior 12-24 hours.

**{¶ 35}** When the paramedics treated appellant's wounds and cleaned up the dried blood, appellant told them that the wounds on his neck were from his efforts to kill himself. He did not respond when asked about the wounds on his arms. They could not tell how old the wounds were, but some lacerations were still bleeding. On the ride to the hospital, appellant appeared to be oriented to time and place and could answer questions about his medical history.

**{¶ 36}** At the hospital, appellant told Captain Johnson what had happened, but appellant is very difficult to understand in the recording of the conversation. Captain Johnson understood from the conversation that appellant first hit Mrs. Beach on the hand, then he hit her a few times with the pruner, and finally he hit her head with the pick ax. He repeatedly indicated both that he did not want to kill her and that he wanted to hurt her. Appellant stated that Mrs. Beach asked him not to hurt her anymore, but it is not clear when she made this statement. He also stated that he had taken the batteries out of the phone (the police never located the phone) and something about wanting to make her move.

**{¶ 37}** The forensic pathologist who performed the autopsy of Mrs. Beach testified that Mrs. Beach was in very poor health at the time of her death due to coronary disease and, therefore, her activities would have been very limited. The pathologist identified 109 separate injuries to the body. Mrs. Beach's right arm was extremely bruised due to

fractures and 21 cut wounds. The bruising would have occurred prior to death. The bones in her hand were crushed. The cuts on her hand indicated that she had grabbed a knife or at a knife. Her left arm had 17 cut wounds but no bruising and, therefore, the pathologist determined these wounds were made close to death or afterward. The back of Mrs. Beach's right shoulder was also wounded with a stab wound and cut wounds by an object that was not sharp. The pathologist predicted that Mrs. Beach had turned away from the recliner in order to have suffered these wounds. The pathologist also opined that this puncture wound was caused by the pruners. Several blows to the head caused 17 cerebral, cranial injuries that crushed the bones of her face and skull. These blows to the head had to have been made with a great deal of force and the majority of the wounds to the head would have been caused by the pick ax. Mrs. Beach's death would have occurred shortly after these wounds had been inflicted. On her left leg there were 10 wounds, with one just above the knee. The cut above the knee extended to almost the entire width of the leg and was very deep. Again, it lacked bruising, which indicated that it was made very near to death or afterward. The right leg had 11 similar wounds, except the wound above the knee was almost totally around the leg and was deep enough to also cut the bone. These wounds had abrasions that indicated the instrument used was blunted. These wounds indicated an attempted amputation. The left ankle had a laceration make with a very sharp instrument but the wound was more superficial. The pathologist believed that the shovel caused some of the wounds because of the transfer pattern of the blood on the clothing and left a patterned abrasion on the skin. Other

wounds all over the body were caused by sharp instruments, i.e., the knives. Ultimately, the pathologist opined that Mrs. Beach died on August 15, 2010, as a result of cranial cerebral injuries due to a beating.

**{¶ 38}** An investigator from the BCI testified the agency seized from the home five knives found under the footrest area of the recliner or end table a few feet away from the recliner, all of which had blood stains. They also seized several tools located behind the recliner, near the wall: a folding shovel, a large pruning tool, and a pick ax. They also found a notepad with blood stains on top of the table near the door, but it was difficult to read the message. There was no evidence of forced entry into the home or of a struggle. There was no evidence that any blood clean-up had occurred in the home. A large blood stain was found in a second area in the living room where they found some pillows with blood stains on them. The blood stains on Mrs. Beach's legs indicated that the foot rest had been lowered at some point during the attack. But, the knives were placed in an orderly fashion under the foot rest.

**{¶ 39}** Appellant testified he was injured in a work accident in 1984 that caused a head injury and resulted in his need for a wheelchair. On the morning of August 16th, he heard the phone ringing and then someone banging on the door. He was lying on the floor at the time and could not get up and did not have his glasses. When he located his wheelchair, he got into it and answered the door. He recalled asking Mrs. Townsend to call 911 because he thought he had killed his wife.

**{¶ 40}** Appellant recalled that at some point in the evening of August 15th, when his wife was in the bathroom, he went to the garage and picked up the tools found in the living room. When his wife noticed the tools, he told her that he intended to destroy the furniture. He had no memory of striking his wife with the tools. He testified that he moved his wife's walker so he could get to the TV and desk, but in his statement to Captain Johnson on August 16th, appellant had said that he had moved the walker so his wife could not get away from him. He wanted to smash the TV and the desk because the couple had been arguing about the mail and the desk earlier that day and how Mrs. Beach watched too much television. He also testified that he had taken the batteries out of the phone that night and threw it somewhere because Mrs. Beach always had the phone off the hook, depleting its battery power, which prevented him from using it.

**{¶ 41}** Appellant had wanted to get a divorce from Mrs. Beach for some time and had mentioned it that night, but she did not respond. He had been angry with her for many years because he believed she was stealing money out of his penny jar, she was stealing checks that came to the home, and she had gone to Burger King three or four times a day. The only good thing he could recall about their relationship was that she was a good friend to talk with about anything. He recalled that they argued on a daily basis and that he had prior contact with the police as a result. He recalled writing a note that night because she wanted him to put his statements in writing. The note states "I love, you never lied to you." [sic] He testified that he never intended to hit her or kill

her. Appellant also testified that he recalled Mrs. Beach stating that the knives were too dull. Regarding his own wounds, appellant testified that he did not make all of the cuts.

**{¶ 42}** On appeal, appellant argues there was no evidence of prior thought or preparation to choosing the murder weapon or murder site. Instead, he asserts that his testimony denying his intent to kill his wife and explaining that he went to get the tools in order to smash the furniture is the only direct evidence on this issue. Appellant fails to recognize, however, that the jury did not have to find appellant's testimony credible.

**{¶ 43}** Certainly, there was some evidence from which the jury could have inferred appellant had a spontaneous, emotional outburst that night. However, the jury was also presented with a significant amount of evidence, direct and circumstantial, of appellant's prior calculation and design to murder his wife. This evidence includes: the intensity and number of the wounds Mrs. Beach suffered; the poor relationship between the couple; appellant's prior contact with the police involving domestic issues; appellant's unhappiness or frustration with his wife from past events and the argument that occurred the night of her death; appellant waited until Mrs. Beach left the room to bring in tools from the garage; appellant assembled an array of different types of tools and knives within a short period of time his wife was absent while he was either in a wheelchair or walking with his impaired ability; appellant obtained three knives to supposedly smash furniture yet no furniture was damaged; appellant admitted moving Mrs. Beach's walker away from her, which she relied upon to walk, and removed the batteries from the phone she kept by her chair; appellant admitted Mrs. Beach asked him

to stop beating her, but he did not; and appellant admitted at one point he wanted to hurt his wife.

**{¶ 44}** Upon a review of all of the evidence, we find that there is no indication that the jury lost its way in evaluating the evidence by improperly weighing the evidence or determining the credibility of the witnesses. Appellant's fourth assignment of error is not well-taken.

**{¶ 45}** In his fifth assignment of error, appellant argues that the trial court abused its discretion and violated appellant's constitutional rights in imposing a sentence of life imprisonment without parole based upon factual findings made by the judge, appellant's history, and the psychiatric evidence before the court.

**{¶ 46}** When reviewing a felony sentence, the appellate court must first examine the trial court's sentence to determine if it is clearly and convincingly contrary to law pursuant to R.C. 2953.08(G). If the appellate court finds that the trial court complied with all applicable rules and statutes, it then determines whether the trial court abused its discretion by imposing the sentence. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124 ¶ 14-17. The abuse of discretion standard requires that we find the trial court's sentence was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

**{¶ 47}** At the sentencing hearing, the court acknowledged it had to consider the principles and purposes of sentencing (R.C. 2929.11) and that it considered appellant's

rehabilitation along with the seriousness of the offense and need to protect the public from criminals such as appellant (R.C. 2929.12). The court imposed a prison sentence allowed under the law.

**{¶ 48}** In his case, the court could elect between a sentence of life imprisonment without parole or with parole after 20, 25, or 30 years. Appellant argues that the trial court ignored the psychological reports, which evidenced appellant's cognitive impairment and personality changes, and went on to make its own unconstitutional factual findings. However, appellant has not specifically identified the improper findings the court made except that the court did not find that there were any facts which made this crime less serious.

**{¶ 49}** At the sentencing hearing, the judge indicated that this was the worst murder he had ever seen, with the victim, appellant's spouse, suffering both physical and psychological harm at a time when she was severely incapacitated. The trial court did not address the issue of whether appellant's inability to control his emotions was the result of cognitive impairment and injury. However, the court specifically addressed the psychological report in its sentencing judgment and noted that there was nothing in the report that indicated that appellant did not know at the time that killing his wife was wrong or that he was not able to tell right from wrong. The court further noted that appellant deliberately planned the attack and carried it out ruthlessly and never showed any remorse afterward. Because appellant showed no mercy to his wife when she begged for it, the court was unwilling to show appellant any mercy in sentencing.

**{¶ 50}** The court obviously concluded that although appellant's cognitive abilities and emotion state were compromised, appellant still understood right from wrong and carried out a deliberate plan to kill his wife in a ruthless manner. Therefore, we find appellant has failed to demonstrate that the trial court abused its discretion by sentencing appellant to life imprisonment without parole. Appellant has also failed to establish that the court made any improper factual finding in determining appellant's sentence. Appellant's fifth assignment of error is not well-taken.

**{¶ 51}** Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE