[Cite as *State v. Perna*, 2012-Ohio-5557.]

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

State of Ohio — Court of Appeals No. WD-11-043

Appellee — Trial Court No. 2010CR0205

v.

Sara Perna — **DECISION AND JUDGMENT**

Appellant — Decided: November 30, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

Richard M. Kerger, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the July 13, 2011 judgment of the Wood County Court of Common Pleas, which sentenced appellant, Sara Perna, after she was convicted by a jury of violating R.C. 2913.02(A)(2), grand theft, a fourth degree felony. Upon consideration of the assignments of error, we affirm in part and reverse in part the

decision of the lower court. Appellant asserts the following assignments of error on appeal:

1. The trial court abused its discretion in admitting State's Exhibit 2, an unauthenticated computer spreadsheet.

2. Defense counsel was ineffective when he failed to properly subpoena records of the YMCA relevant to the charges against defendant.

3. The trial court committed error in calculating the amount of restitution by failing to hold a hearing on restitution.

{¶ 2} Appellant was indicted on charges of theft for taking cash payments made to the Perrysburg, Ohio YMCA's daycare program from June 1, 2007, through November 23, 2009, when she was the senior program director. The following evidence was admitted at trial.

{¶ 3} Three parents of children enrolled in the daycare program during the period of time at issue testified they paid for daycare by either placing the payment in a drop-off box or handing it directly to the director. One parent, Denise Tansey, recalled paying by check at least 90 percent of the time and the other two parents (Theresa Bryant and Kelly Binder) always paid in cash. Both Tansey and Bryant testified they were never notified that they were delinquent in their payments. They also both recalled receiving receipts for each payment but did not retain them.

{¶ 4} Three childcare center directors testified regarding the procedure for collecting childcare tuition. Pam Sattler, who had worked for the YMCA for seven years

and almost continually as the director of the adventure center at the Perrysburg YMCA, testified that appellant supervised the childcare directors from 2007 through November 2009. Appellant's office was located in the main YMCA Perrysburg building while the childcare program was located in various offsite locations. Sattler maintained paper u-bill sheets for each family in binders at the childcare site where she recorded parent payments. Brian Keel, the executive vice president of finance testified that the u-bill sheet was an internal ledger used to track the invoice, amount paid, and the payment method for each child. Sattler further testified she was directly responsible for collecting payments parents left in a locked box and recording the payments on the u-bill sheets. She always indicated whether the payment was by cash (noted as "cash") or check (noted by a check number) and delivered the payments normally to appellant the same day. She identified some of the u-bill sheets introduced into evidence as those she had prepared. She could not explain what the "c" meant on some of the other sheets. If a parent wished to charge the payment, Sattler took the information down and attached a note to the u-bill sheet for appellant to process at her office. The same day she collected the payments, Sattler would deliver the payments (a mixture of cash and checks) directly to appellant. She either gave the payments directly to appellant; placed the payments in an accordion folder on appellant's desk, as directed by appellant if she was not present but her door was open; or placed the payments in her mailbox located outside appellant's office if her office was locked. Sattler knew there was a key to the office, but did not know where it was located. Sattler did not know what happened to the payments after she dropped them

off with appellant. But, she never received any complaints from parents about not being properly credited for their payments.

{¶ 5} Leslie Doria testified she was the director of the Grace Church childcare facility from 2005 until 2008 and she also handled the payments for childcare services in the same manner as Sattler except she also totaled the entire collection to reassure herself that she was on target to meet her budget for the month. Doria added she also gave parents a carbon copy receipt. Doria also testified that from 2007 through 2009, she also became close friends with appellant. Appellant was a godmother to Doria's daughter and Doria was going to be in appellant's wedding. On the day that appellant was fired and escorted from the office, Doria knew something was happening because of the presence of the Vice President of Association Services and Executive Vice President of Finance. She waited near the office and saw appellant escorted out of the building. Doria could see that appellant was upset but not crying or resisting. Doria called appellant immediately, and she admitted she had taken the cash payments.

{¶ 6} Keri Stierwalt, a former director of the childcare center at Grace Church from 2008 to 2009 testified that she quit her position because she did not like the way she was being treated by her supervisors, including appellant. Stierwalt testified that she handled the childcare payments in the same manner as the other two directors, except she did not always take the payments to appellant every day they were collected. She recalled that she always wrote "cash" if the payment was made by cash.

{¶ 7} Michelle Bock, a customer service manager at Fifth Third Bank authenticated the banks electronic records of the checks deposited by the YMCA.

{¶ 8} Brian Keel testified that he was employed by the YMCA for six years, first as the chief financial officer and later as executive vice president of finance, until the new CEO decided to bring in his own people and Keel's employment was terminated. In his position, he managed the funds of the YMCA and oversaw nine staff members, including appellant. He testified appellant was fired because his staff had ascertained that no cash deposit had been made from the YMCA childcare program for the years 2007, 2008, and 2009. The discrepancy was found when the YMCA was implementing a new system to better track which parents had not made their childcare service payments. Under the old system, a staff member would have to go to each childcare site and examine their u-bill sheets. The first step to implementing the new system was to photocopy all of the u-bill sheets and record the payments, which led to the discovery of the missing cash payments. Keel discovered that only the programs under appellant's control lacked cash deposits. Keel knew appellant and, although she was a good employee, knew she was reluctant to comply with the standard operating procedures. As an example, Keel explained that appellant failed to invoice parents at the time the service was rendered and instead invoiced them at the time the parent paid. The parent was supposed to be invoiced on Fridays for the following week's services. As a result, appellant always self-reported a very low amount for the amount owed for childcare services compared to the other program directors.

{¶ 9} Based on the u-bills, Keel's staff prepared a spreadsheet of the payment records, and cross-checked the bank deposits against the records. From this analysis, he determined that none of the cash payments were deposited for three years: $3,805 for 2007, based on 17 families making various cash payments, $7,354 for 2008, based on 25 families making various cash payments, and $4,884 for 2009, based on 19 families making various cash payments, for a grand total of missing cash deposits of $16,043.

{¶ 10} Keel and the human resources director, Mark Brunsman, met with appellant to discuss the discrepancy since she was the director of the program. At first, appellant denied that any cash had been collected. When she was told that they had evidence of the collection of cash from the u-bill sheets, she did not show any surprise or eagerness to get to the bottom of the issue. When questioned further, appellant admitting she had taken the money and wanted to work out an arrangement to pay it back.

{¶ 11} After the meeting, Keel approached Sattler to determine if Sattler could explain what had happened. Without Sattler knowing that appellant had already been terminated, she explained the procedure she followed. Sattler had made a drop off of the payments that day, which Keel immediately checked. He found everything where Sattler had indicated.

{¶ 12} On cross-examination, Keel admitted that several entries in the spreadsheet listed cash payments although the payment type was either left blank or listed as "cc," which would have indicated a credit charge or a check number instead of "c" for cash. He also admitted that the total number of cash payments noted on the sheet was

erroneously totaled as 61 and that some of the entries on the spreadsheet summary conflicted with the u-bill sheets.

{¶ 13} Marla Frankevic, the center administrator of the Fort Meigs YMCA testified that, until the fall of 2007, she worked the front desk as a member service staff. She would collect payments from members, enter the information into the computer, and at the end of her shift create a balance sheet to match the computer entries and drop the cash and check payments into the safe. When her title changed, she became responsible for all of the payments taken at the front desk. In September 2009, she would scan the checks to be immediately deposited in the bank. She would ensure that each staff member who collected payments had the cash and checks to match the computer entries. She was responsible for all of the money received which was related to the YMCA programs but not the childcare funds. Frankevic knew that appellant prepared similar reports and sometimes scanned checks for her if she was on vacation, but she never reviewed the reports. Frankevic could not recall any cash deposits in the bank bag from appellant. She also testified that the safe and petty cash fund was located in appellant's office. Occasionally, small sums would be missing from petty cash. Sometimes the funds would be returned. She knew that there was a key to appellant's door that was hidden, but only a few employees were told about it.

{¶ 14} Mark Brunsman testified that in November 2009, he and Keel talked to appellant in their investigation of the missing cash payments from the childcare program. They began with her since she was the leader of the program. During the course of their

discussions, she admitted taking cash payments from the Bryant and Binder families. The entire conversation was very calm and professional. Appellant could not recall the total amount or for how long she had been taking the money. She was told that she would be terminated immediately. Until this event, he had always regarded her as an excellent employee. Brunsman also testified he believed Stierwalt was terminated but could not recall the details.

{¶ 15} Regarding the admissibility of the prosecution's Exhibit No. 2, Doria testified that a few months prior to trial, she found Exhibit No. 2, a chart, in the files transferred to her computer from appellant's computer after she was terminated and Doria had taken over appellant's position. Doria came across the files as she was deleting files that she no longer needed before backing up her computer. Keel and Brunsman also identified Exhibit No. 2 as the spreadsheet Doria had found.

{¶ 16} Patrick Jones, a Perrysburg police detective, testified he investigated a report of theft submitted by Brunsman in January 2010. When he reviewed the u-bill sheets and other documents the YMCA provided, he determined that $16,043 in cash had been taken. After interviewing several employees to determine the procedures involved in taking payments and the CFO and Brunsman, the officer decided to charge appellant with theft.

{¶ 17} Appellant testified in her defense. She testified that she was hired in October 2001 as an after-school childcare counselor on a part-time basis. She was promoted in the fall of 2002 to the position of childcare director. At that time, she would

have been trained in the procedure for creating the u-bill sheets. She testified she never received cash payments while in that position. She was promoted to assistant director in 2005. She was eventually promoted to the position of senior program director at the Fort Meigs YMCA. In her final position, she supervised the staff of 60-100 full- and part-time employees and entered payments into the computer from the u-bill sheets generated by the childcare directors. Appellant also supervised the summer day camp program held at a metropark. Appellant hired, trained, and terminated her staff directly. She testified that she terminated Stierwalt with the approval of Brunsman. All of the documentation for the discharge was retained on her computer at the YMCA.

{¶ 18} Appellant identified the u-bills in evidence and acknowledged her handwriting on the u-bills indicating that she entered the information on the computer. She further testified that on one of the u-bills for the summer day camp there was an entry for Bryce Silcox for $1,040. While there was a "c" next to his name, appellant knew that his bill was paid by credit card because his grandmother paid the bill and she lived in Connecticut. Another entry on a u-bill for the Alexander family for $80 was also paid by a credit charge because the parent was appellant's supervisor and appellant would personally run the credit card. Appellant testified she never had a conversation with Keel about the meaning of the "c" on the u-bills.

{¶ 19} When she was questioned by Keel and Brunsman about the billing procedures, she was asked if she had ever received any cash. For all the time she had worked for the YMCA, she never knew the YMCA would accept cash. She recalled that

she was told she would be terminated for not supervising the employees to ensure that the cash payments were deposited. She was never accused of stealing the money and never admitted to taking any of it. A few days later she received a letter from Brunsman which he wanted her to sign confirming that she had been terminated for stealing the money.

{¶ 20} Appellant admitted that she had been the godmother to Doria's daughter and that they had talked about Doria being in appellant's wedding. But, appellant testified that she did not speak to Doria until later in the evening of the day appellant was fired and never admitted to taking any money. She told Doria that she had been fired for missing cash payments. Appellant also testified to the numerous awards she had received over the years for her excellent performance at the YMCA.

{¶ 21} In her first assignment of error, appellant argues that the trial court erred by admitting an unauthenticated computer chart into evidence.

{¶ 22} The trial court's determination of the admissibility or exclusion of evidence is generally a matter of discretion that will not be overturned on appeal absent a showing that the trial court abused its discretion. *State v. Robb*, 88 Ohio St.3d 59, 68, 723 N.E.2d 1019 (2000). An abuse of discretion is more than an error of law or judgment; it implies an unreasonable, arbitrary or unconscionable attitude. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Pursuant to Evid.R. 901, authentication or identification is a condition precedent to admissibility. The burden of proving a piece of evidence is what it is purported to be is met by sufficient evidence of authentication or identification, which is a lower standard than the "preponderance of the evidence" or "beyond a

reasonable doubt." *Burns v. May*, 133 Ohio App.3d 351, 355, 728 N.E.2d 19 (12th Dist.1999). Evid.R. 901(B)(1) provides that authenticity may be established by testimony of a witness with knowledge of the execution, preparation or custody of the writing.

{¶ 23} During the trial, the prosecution had several individuals identify and authenticate Exhibit No. 2 as a chart found on Doria's computer. Doria testified that she found it several months prior to trial in a file stored on her computer that had been transferred from appellant's computer after she was terminated. Keel and Brunsman also testified that Doria found the chart on her computer. No further questioning was conducted regarding the document itself. This exhibit was admitted into evidence and submitted to the jury for consideration. In closing arguments, the prosecutor instructed the jury to carefully consider this chart and compare the running total of $4,569 with the cash payments indicated on the u-bill sheets for 2009.

{¶ 24} The document is a table with three columns: a 2009 date, a last name, and a dollar amount. Some of the entries exactly match the spreadsheet prepared by Keel (Exhibit No. 3, which recorded the missing 2009 cash payments). Some entries do not correspond to Keel's spreadsheet in any way and the family name does not match any of the names on Keel's spreadsheet. Some entries have the corresponding date and name, but the dollar amount is different. Some entries have a name of a participating family, but no payment was recorded as missing on Keel's spreadsheet. Some entries have the

corresponding name and dollar amount, but a different date. Keel determined the total cash missing for 2009 as $4,884. The total listed on Exhibit No. 2 is $4,569.

{¶ 25} Appellant argues that this document should have been excluded because it was not properly authenticated. It was not a regularly-kept business document. It is untitled. It was found 18 months after appellant was terminated. The IT employee who supposedly transferred all of appellant's files to Doria's computer did not testify. There was no evidence it was created by appellant. The document does not accurately reflect the cash payments for 2009. Finally, appellant argues that it is illogical that someone who was stealing the cash payments would generate evidence of their theft.

{¶ 26} The prosecution argues that Doria testified that the files placed on her computer were created by appellant regarding the childcare program, daycamp, etc. Appellant also testified that she created documents in her computer to record parent payments for the childcare program. Exhibit No. 2 contained payment information of the type appellant would have collected as the childcare director. There was no break in the chain of custody and Doria did not give any reason to suspect that anyone tampered with the files. Finally, the prosecution argues Exhibit No. 2 was not prejudicial to appellant because it was merely surplus evidence of the theft to which she had already admitted.

{¶ 27} Exhibit No. 2 is problematic for the reasons set forth by appellant, its authentication, as well as its relevancy. While the prosecution submitted Exhibit No. 2 as proof that appellant was keeping track of the money she was stealing, we find the chart could have done little more than confuse the jury. The failure of the prosecution to have

the IT employee verify that this was a file he transferred from appellant's computer to Doria's is a significant lapse in its authenticity that cannot be ignored. Furthermore, the facts that the document is untitled, there is no evidence regarding the reason for its creation, and that the entries are not consistent with the missing cash payments recorded by Keel, weakens its relevancy. Exhibit No. 2 did not contribute any relevant information upon which the jury could have determined the facts in this case. Therefore, we find that the trial court abused its discretion by admitting the document into evidence.

{¶ 28} Nonetheless, we find the addition of the document constitutes harmless error beyond a reasonable doubt pursuant to Crim.R. 52(A). Appellant's admission to Keel, Brunsman, and Doria of the theft, the circumstances of appellant's position and the childcare payment procedures that gave rise to the opportunity to steal the cash deposits, the copies of the invoices and deposits, and Keel's spreadsheet alone are sufficient evidence of appellant's guilt and the amount of missing money. Appellant's first assignment of error is found not well-taken.

{¶ 29} In her second assignment of error, appellant argues her counsel rendered ineffective assistance by failing to properly subpoena YMCA records regarding its loss of funds and other records relevant to this case.

{¶ 30} On December 9, 2010, appellant's attorney subpoenaed from Brunsman the YMCA policy and procedure handbook, unemployment compensation records for employees accused of theft, and all employee records regarding Brunsman. On

January 24, 2011, the trial court granted a motion by the YMCA to quash the December subpoena on the ground that the subpoena was unnecessarily broad and burdensome.

{¶ 31} Appellant's counsel then subpoenaed from the YMCA on April 12, 2011 all e-mails regarding this situation and incident reports to the insurance company regarding any time money was missing from the YMCA safe. In a separate subpoena, appellant's counsel subpoenaed from the Fort Meigs YMCA detailed deposit slips for the past eight years, detailed payment history from all children in question for the past five years, expense checks regarding appellant, all e-mails regarding this situation and incident reports to the insurance company regarding any time money was missing from the YMCA safe. This second subpoena is not included in the record, but a copy is attached to the prosecution's motion to quash

{¶ 32} On April 29, 2011, appellant moved for a continuance of the May 4, 2011 trial date because the YMCA had not yet responded to appellant's subpoena requests. The prosecution objected and the trial court denied the motion the same day. On May 2, 2011, the prosecution sought to quash these subpoenas on the ground they were improperly served upon the YMCA by fax. In the alternative, the prosecution argued the subpoenas were unreasonable, oppressive, and harassing to the victim. The trial court granted the motion to quash the same day without explanation.

{¶ 33} Appellant bears the burden of proving that her counsel was ineffective since an attorney is presumed competent. *Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *State v. Lott*, 51 Ohio St.3d 160, 174,

555 N.E.2d 293 (1990). To meet this burden of proof, appellant must show that: (1) there was a substantial violation of the attorney's duty to his client, and (2) the defense was prejudiced by the attorney's actions or breach of duty. *Strickland, supra*, and *State v. Smith*, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Prejudice is shown where there is a reasonable probability that a different result would have occurred in the case if the attorney had not erred. *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus, and *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, ¶ 108.

{¶ 34} Appellant asserts that her counsel's failure to properly submit two subpoenas resulted in the court quashing the subpoenas. She asserts that the documents sought, specifically the deposit slips for the past eight years, would have enabled appellant to prove that no cash had ever been deposited during the time before or during her employment by the YMCA. Furthermore, evidence from the insurance company of other incidences of stolen cash would have raised doubts as to whether appellant committed this theft. The prosecution argues that we cannot consider this assignment of error because we are unable to determine if these documents would have been beneficial in her case when we do not have them before us.

{¶ 35} We agree with appellant that her attorney rendered ineffective assistance by failing to properly subpoena the records of the YMCA which could have aided her defense. However, we also find that appellant was not prejudiced by her attorney's failure. All of the childcare directors testified that they received cash and passed it along

to appellant, either directly to her or by placing in a spot she designated. Keel actually checked on Sattler's last payment collection and found it in appellant's office just as Sattler had described. Two parents confirmed that they paid in cash and were never notified that their payment was not received. Frankevic testified that she never saw any cash deposit from appellant. Appellant was responsible for the billing for the childcare programs and entered the payments into the computer. If the cash payments the parents acknowledge making and the directors acknowledged receiving were missing, appellant would have known there was a problem when she recorded the payments on her computer. Finally, three YMCA employees testified that appellant acknowledged to them that she had taken at least some of the cash payments. Even if appellant could have proven that there had never been any cash deposits before and after she started working for the YMCA, this evidence would not have outweighed the evidence against her. Even evidence of another employee having been discharged for theft would not have altered the outcome in this case. Furthermore, appellant was already familiar with the procedures at the YMCA and could have identified any other reason for the missing cash deposits. Therefore, we find appellant's second assignment of error not well-taken.

{¶ 36} In her third assignment of error, appellant argues that the trial court erred by calculating the amount of restitution by relying on inaccurate records and failing to hold a hearing when the amount was disputed.

{¶ 37} R.C. 2929.18(A)(1) provides that when a court imposes a sentence upon a felony offender, the court may also require the offender to pay restitution as part of her

sentence. The statute also provides: (1) the amount of restitution shall be limited to the victim's economic loss; (2) the court can base the amount of restitution upon a recommended amount (by the victim, offender, presentence investigation report, estimates or receipts in the record, or other information); and (3) the court must hold a hearing if the offender or victim or survivor of the victim disputes the amount.

{¶ 38} At the sentencing hearing, appellant indicated that she had requested a restitution hearing at a later date if restitution was ordered. The prosecution indicated that it was ready to hold the restitution hearing at the same time as the sentencing hearing since it bore the burden of proof and had witnesses available. Brunsman testified Keel prepared the spreadsheet evidencing a total of $16,043 of missing funds. Keel was no longer employed by the YMCA at the time of this hearing. Brunsman further testified that he was unaware that Keel acknowledged some errors in the spreadsheet on cross-examination. The prosecution argued the issue of errors was a matter of whether the court believed Keel admitted to mistakes and whether the court found appellant's testimony about her process for creating u-bills credible. Appellant argued, however, that the issue was not one of credibility but simply the mathematical calculations made by Keel and his staff. Therefore, appellant requested additional time to review the evidence to determine all of the mathematical errors and sought to have Keel himself testify.

{¶ 39} The court indicated that it was not required to hold a hearing and could determine the amount of restitution by reviewing the trial transcript. The court then

ordered restitution in the amount of $16,043, with the reservation that credit would be given to appellant if the transcript revealed any mathematical errors.

{¶ 40} Whether a court imposes restitution as part of the sentence is a discretionary decision reviewed under an abuse of discretion standard. *State v. Noe*, 6th Dist. Nos. L-06-1393, L-09-1193, 2009-Ohio-6978, ¶ 163, citing *State v. Marbury*, 104 Ohio App.3d 179, 181, 661 N.E.2d 271 (8th Dist.1995). But, the court's determination of the amount of restitution is a factual issue reviewed under a manifest weight of the evidence standard. *State v. Littler*, 2d Dist. Nos. 24532, 24533, 2012-Ohio-210, ¶ 10 citing *State v. Clemons*, 2d Dist. No. 20206, 2005-Ohio-436, ¶ 10.

{¶ 41} As stated above, Keel admitted on cross-examination to several entries where cash was presumed either because there was no record of the payment type, a "cc," (which could have indicated a credit charge) was entered, or a "c" (which could have represented a check) was entered. He also admitted the total number of cash payments noted on the sheet was erroneously totaled as 61 and some of the entries on the spreadsheet summary conflicted with the u-bill sheets. Furthermore, at the time of trial, appellant's focus was not on the details of the spreadsheet but whether a theft over $5,000 had occurred.

{¶ 42} Because it is clear from the record that appellant challenged the accuracy of Keel's spreadsheet and disputed the amount of restitution, we find that the trial court erred as a matter of law by failing to hold a hearing on the issue. Appellant's third assignment of error is well-taken.

{¶ 43} Having found that the trial court did commit error prejudicial to appellant in part, the judgment of the Wood County Court of Common Pleas is affirmed in part and reversed in part. The judgment is reversed only insofar as the court failed to hold a hearing on the amount of restitution to be paid. This matter is remanded to the trial court for further proceedings. Appellee is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed in part
and reversed in part.

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.
CONCUR. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCURS AND WRITES SEPARATELY. JUDGE

YARBROUGH, J.

{¶ 44} I concur in the decision and judgment, but write separately with respect to the second assigned error. I agree that defense counsel's handling of the subpoenas for YMCA documents did not prejudice her defense, and thus this assignment is not well-taken. However, I respectfully disagree with the statement in the majority decision that her counsel's "fail[ure] to properly subpoena the records of the YMCA" amounted to ineffective assistance.

{¶ 45} A defendant asserting a claim of ineffective assistance must show both that trial counsel's representation fell below an objective standard of reasonableness and that

the ineffective representation prejudiced his case. *State v. Burke*, 97 Ohio St.3d 55, 776 N.E.2d 79 (2002). The presumption that counsel was competent sets a necessarily high standard, and we are cautioned that counsel's professional judgments on trial-related matters are entitled to "a heavy measure of deference." *Id.* at ¶ 6. This standard is especially stringent as it pertains to counsel's decisions on trial tactics, discovery matters, and the relevance or necessity of witnesses or documents. This includes decisions on the subpoenaing of witnesses or documents for trial. *State v. Coleman*, 3d Dist. No. 9-03-23, 2003-Ohio-6440, ¶ 40-41; *State v. Smith*, 2d Dist. No. 18654, 2001-Ohio-1396.

{¶ 46} While in this case defense counsel arguably could have been more prompt in subpoenaing documents, and certainly the two subpoenas at issue here could have been more narrowly tailored to securing specific YMCA documents relevant to appellant's defense, his actions were not so unreasonable that his *overall* representation was "ineffective" under the standard of pervasive "unprofessional errors." *Burke* at ¶ 6. Also, it is not at all clear that "but for" counsel's issuance of two overly-broad subpoenas, even assuming them to be "unprofessional errors," "the result of the [trial] would have been different." *Id*.