[Cite as *State v. Honzu*, 2023-Ohio-2831.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - DAVID HONZU, Defendant-Appellant.	**CASE NO. 2022-T-0122** Criminal Appeal from the Court of Common Pleas Trial Court No. 2022 CR 00469

O P I N I O N

Decided: August 14, 2023
Judgment: Affirmed

Dennis Watkins, Trumbull County Prosecutor, and *Ryan J. Sanders*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Dennis Day Lager, 1025 Chapel Ridge, N.E., Canton, OH 44714 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} On a late summer evening in early July 2022, an assailant attempted to kidnap a young woman at a self-service car wash in Champion, Ohio. Due to her quick escape, efficient police work, and modern technology, the appellant, David Honzu ("Mr. Honzu"), was apprehended a mere few hours later, still driving around in his vehicle, naked from the waist-down and intoxicated.

{¶2} Mr. Honzu appeals from the judgment entry of the Trumbull County Court of Common Pleas, which after a bench trial, sentenced him on two merged counts of the lesser included offense of attempted kidnapping with sexual motivation, sexually violent

predator ("SVP"), and repeat violent offender ("RVO") specifications, and on one count of tampering with evidence, for an aggregate term of imprisonment of a minimum of 17 years up to a maximum of life.

{¶3} Mr. Honzu raises two assignments of error on appeal, contending (1) the state failed to prove attempted kidnapping pursuant to R.C. 2923.02(A) and 2905.01(A)(4) because there was insufficient evidence to prove he attempted to restrain the liberty of the victim with a purpose to engage in sexual activity; and (2) he was deprived of the effective assistance of counsel because his trial counsel failed to file motions to suppress the evidence seized from searches of his vehicle and cell phone, and the cumulative pre-trial and trial errors of defense counsel deprived him of a fair trial. These cumulative errors include failing to challenge search warrants, which lacked probable cause, failing to object to the state's leading questions of two witnesses, and defense counsels' objection to the state's offer of two of his prior convictions.

{¶4} After a thorough review of the record and pertinent law, we find Mr. Honzu's assignments of error to be without merit. Firstly, Mr. Honzu argues the trial court erred in overruling his Crim.R. 29 motion on counts one and three (kidnapping) because he was convicted of the lesser included offense of attempted kidnapping. A conviction on a lesser included offense, however, does not equate to a determination that the trial court erred in failing to grant a Crim.R. 29 sufficiency motion as to that offense. A trier of fact does not have to find a defendant not guilty of an offense before considering a lesser included offense. Thus, we review Mr. Honzu's sufficiency of the evidence argument on the lesser included offense of which he was convicted, i.e., attempted kidnapping.

{¶5} A review of the evidence the state introduced at trial reveals the state introduced more than sufficient evidence that Mr. Honzu attempted to restrain the victim

through the victim's testimony, her police statement, and surveillance videos from the car wash. The state also introduced sufficient evidence that Mr. Honzu attempted to restrain the liberty of the victim for the purpose of nonconsensual sexual activity from data reports of Mr. Honzu's cell phone, which revealed his route throughout the evening, bank transactions, and search history. This evidence revealed Mr. Honzu visited three car washes in five hours while watching pornographic videos, including in the minutes prior to the incident.

{¶6} Secondly, since there was no reasonable probability the motions to suppress the inventory search of his vehicle and the subsequent searches of his vehicle and cell phone would have been granted, we conclude Mr. Honzu's trial counsel were not ineffective for failing to file motions to suppress on those grounds. There was some testimony as to standard police procedure for inventory searches, and the items seized in the inventory search were illegal contraband and in plain view. Further, the search warrants were not facially defective and described with particularity the places to be searched and items to be seized. Lastly, none of Mr. Honzu's remaining claims of ineffective assistance of counsel have merit since he failed to allege any prejudice resulting therefrom. Cumulative error cannot be established by simply joining meritless claims together.

{¶7} The judgment of the Trumbull County Court of Common Pleas is affirmed.

Substantive and Procedural History

{¶8} After being bound over from the Warren Municipal Court, the Trumbull County Grand Jury indicted Mr. Honzu on five counts: (1) kidnapping, a first-degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(A)(4) and (C)(1), 2941.147, 2941.148, and 2941.149; (2) kidnapping, a first-

degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(B)(1) and (C)(1), 2941.147, 2941.148, and 2941.149; (3) kidnapping, a first-degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(B)(2) and (C)(1), 2941.147, 2941.148, and 2941.149; (4) aggravated robbery, a first-degree felony, with SVP and RVO specifications, in violation of R.C. 2911.01(A)(1) and (C), 2941.148, and 2941.149; and (5) tampering with evidence, a third-degree felony, in violation of R.C. 2921.12(A)(1) and (B).

Bench Trial

{¶9} The case proceeded to a bench trial at which the state presented the testimony of L.B., the victim; Joseph Gillis ("Mr. Gillis"), the owner of the car wash; Officers Brian Mackey and Joshua Rudesill of the Champion Police Department; Deputies John Hughes ("Dep. Hughes"), Ron Carr ("Dep. Carr"), and Russ Molinato of the Trumbull County Sheriff's Office; and Detectives Eric Laproccina and Michael Altiere ("Det. Altiere") of the Warren Police Department. The state also presented surveillance videos, photographs, and screenshots of Mr. Honzu and his vehicle from the car wash; items procured in the search of his vehicle; cell phone data reports; and certified copies of his prior convictions.

{¶10} L.B., who was 20 years old at the time, testified that on July 3, 2022, at around 9:30-10:00 p.m., she stopped at Bud's Car Wash in Champion Township, Ohio. She first noticed Mr. Honzu because he was parked next to her in the vacuum area, sitting in his passenger seat. She was inside her car, hanging an air freshener on the mirror when Mr. Honzu opened her driver's side door, confronted her with a knife, and told her not to say anything or he would kill her. He then told her, "move over bitch." Initially, L.B. froze, but she then moved to the passenger side, opened the door, and ran. Mr. Honzu

grabbed her clothing and ripped it in the process of trying to stop her. She managed to escape, and, noticing a car, she ran toward it, asking for help. The occupants assisted her and called the police, who took her statement of the incident.

{¶11} The car wash owner, Mr. Gillis, obtained video footage of the incident from his surveillance system and credit card transactions from that time period. This enabled the police to identify Mr. Honzu as the assailant, his vehicle, a copper-colored Buick SUV, and his address.

{¶12} At approximately 1:30 a.m., L.B. went to the police station upon request and identified Mr. Honzu in a photo lineup. Dep. Carr parked outside Mr. Honzu's home after confirming he was not there. After approximately 30 minutes, he observed Mr. Honzu's vehicle approaching and activated his lights, initiating a traffic stop. Dep. Hughes arrived to assist. Mr. Honzu appeared to stop but then continued driving. Both deputies saw Mr. Honzu bite something and attempt to throw an object out of the closed passenger side window, where it shattered against the glass. The deputies blocked Mr. Honzu's vehicle, forcing him to stop. Mr. Honzu refused to comply with the deputies' orders to get out of the vehicle. When he finally did so, he was barefoot and naked from the waist down with glassy eyes and a white substance in and around his mouth. He appeared intoxicated, and he struggled to put his shorts on, putting both legs through one pant hole.

{¶13} The police conducted an inventory search and in the process found, in plain view, pieces of crack-cocaine, parts of a Chore Boy brillo sponge, and pieces of a pipe. Mr. Honzu was arrested, and the vehicle was towed. Later, the police procured two search warrants for the vehicle and Mr. Honzu's cell phone. Inside the vehicle the deputies found a chaotic scene of various items, including a bottle of lotion in the center console, crumpled napkins, disposable surgery gloves, a tarp, a welding mask, cleaning

supplies, a pair of men's underwear, a pair of men's shoes, and a pocketknife. The hatch/trunk area of the vehicle was completely clean.

{¶14} Data reports from Mr. Honzu's cell phone revealed he drove to two other car washes and accessed numerous pornography sites that evening, including immediately prior to the incident.

Crim.R. 29 Sufficiency of the Evidence

{¶15} Once the state rested, the defense renewed its Crim.R. 29 sufficiency-of-the-evidence motion. After hearing the arguments of counsel, the trial court granted the motion on count two, kidnapping, finding there was insufficient evidence Mr. Honzu removed the victim from the place she was found, and on count four, aggravated robbery, finding there was insufficient evidence Mr. Honzu committed/attempted to commit a theft offense. The court overruled the motion as to the remaining counts of kidnapping (counts one and three) and tampering with evidence (count five).

The Verdicts

{¶16} In a thorough judgment entry, the trial court found Mr. Honzu guilty of two counts of the lesser included offense of attempted kidnapping with sexual motivation, SVP, and RVO specifications and guilty of tampering with evidence.

{¶17} More specifically, the court found Mr. Honzu showed a pattern of behavior, a plan of seeking out a victim, and an opportunity because he went to two other car washes within five hours preceding the incident, during which he viewed pornography, particularly in the minutes immediately before he confronted the victim. Mr. Honzu's behavior also indicated he understood a police investigation was in progress when the deputies initiated the traffic stop because he did not stop his vehicle and threw his crack pipe at the window in an attempt to destroy evidence. The court recognized the serious

and traumatic nature of Mr. Honzu's confrontation with the victim but noted the incident was extremely brief and there was only "slight" evidence of physical restraint.

Sentencing

{¶18} At the sentencing hearing, the court made consecutive sentence and RVO specification findings. The court further found the two counts of attempted kidnapping merged, with the state electing to proceed on count one. The court sentenced Mr. Honzu to serve an indefinite prison term of a minimum of eight years up to a maximum term of life on count one and the SVP specification, an eight-year prison term on the RVO specification to be served consecutive and prior to count one, and a consecutive 12-month prison term on count five, for an aggregate prison term of 17 years to life.

{¶19} Mr. Honzu raises two assignments of error on appeal:

{¶20} "[1.] The trial court erred to the prejudice of defendant-appellant by denying defendant-appellant's R.29 motion for directed verdict of acquittal on the charges of kidnapping in counts one and three of the indictment, based upon the state's failure to provide sufficient evidence for conviction.

{¶21} "[2.] Trial counsel for defendant-appellant were deficient in their performance, such that they denied defendant-appellant the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the Constitution of the United States, thereby questioning and undermining the legitimacy of the outcome rendered in this cause."

Sufficiency of the Evidence

{¶22} In his first assignment of error, Mr. Honzu contends the trial court erred by overruling his Crim.R. 29 motion on counts one and three, kidnapping, since it convicted him of the lesser included offense of attempted kidnapping. He further argues the state

failed to prove the merged count of attempted kidnapping by failing to introduce sufficient evidence that he attempted to restrain the liberty of the victim with the purpose to engage in sexual activity.

{¶23} ""[S]ufficiency" is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.'" *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997), quoting *Black's Law Dictionary* 1433 (6th Ed.1990). "In essence, sufficiency is a test of adequacy." *Id.*

{¶24} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.*

{¶25} When conducting a sufficiency of the evidence analysis, this court is to look at the actual evidence admitted at trial, both admissible and inadmissible. *State v. Kessler Scott*, 11th Dist. Lake No. 2022-L-018, 2022-Ohio-4054, ¶ 26. Further, a claim of insufficient evidence invokes a question of due process, the resolution of which does not allow for a weighing of the evidence. *Id.*

Lesser Included Offense of Attempted Kidnapping

{¶26} We must first address Mr. Honzu's argument that the trial court erred in overruling his Crim.R. 29 motion on counts one and three, kidnapping, because he was convicted of the lesser included offense of attempted kidnapping.

{¶27} A conviction of a lesser included offense does not equate to a determination that the trial court erred in failing to grant a Crim.R. 29 sufficiency motion as to that offense. There is no requirement that a trier of fact determine a defendant is not guilty of an offense before considering a lesser included offense. The Tenth District rejected a similar argument in *State v. Turner*, 10th Dist. Franklin No. 97APA05-709, 1997 WL 798770 (Dec. 30, 1997), remarking that "an indictment on a greater offense necessarily and simultaneously charges a defendant with lesser included offenses as well." *Id.* at *2. The court further explained that even if the trial court had granted the defendant's Crim.R. 29 motion, "a dismissal of the aggravated murder and attempted aggravated murder charges set forth in the indictment would not have mandated a dismissal and defendant's discharge from further prosecution. Rather, because defendant was acquitted of the aggravated murder and attempted aggravated murder charges, the issue on appeal is whether the trial court should have granted defendant's motion of acquittal with respect to the lesser included offenses of murder and attempted murder." *Id*.

{¶28} Similarly, in *State v. Inch*, 6th Dist. Erie No. 92WD045, 1993 WL 93506 (Mar. 31, 1993), the Sixth District dismissed the appellant's arguments that since he was convicted of a lesser included offense, the trial court should have granted his motion for acquittal and dismissed the case in its entirety, or, in the alternative, that since the trial court did not grant his motion for acquittal on the original felony charge, it could not find him guilty on the lesser included offense. *Id.* at *1. The court noted a jury did not have

to unanimously determine a defendant "'is not guilty of a crime charged before it may consider a lesser included offense.'" *Id.* at *2, quoting *State v. Thomas*, 40 Ohio St.3d 213, 533 N.E.2d 286 (1988), paragraph three of the syllabus. *See also State v. Schellentrager*, 8th Dist. Cuyahoga No. 105652, 2017-Ohio-9275, ¶ 11 (When an appellate court reviews a Crim.R. 29 motion, the motion should be reviewed in the context of whether the evidence supported the lesser included offenses of which the defendant was convicted); *In re Moore*, 10th Dist. Franklin No. 04AP-581, 2004-Ohio-6357, ¶ 4-6; *State v. Lambert*, 3d Dist. Putnam No. 12-18-10, 2019-Ohio-3543, ¶ 6-15.

{¶29} Thus, Mr. Honzu's contention is without merit, and we review his sufficiency of the evidence argument in relation to the lesser included offense of which he was convicted, i.e., attempted kidnapping.

{¶30} Pursuant to R.C. 2923.02(A), "attempt," "[n]o person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense."

{¶31} Pursuant to R.C. 2905.01(A)(4), "kidnapping," "[n]o person, by force, threat, or deception * * * shall remove another from the place where the other person is found or restrain the liberty of the other person, * * * [t]o engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will."

{¶32} "Sexual activity" is defined as "sexual conduct or sexual contact, or both." R.C. 2907.01(C).

{¶33} "Sexual conduct" is defined as "vaginal intercourse between a male and a female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or

any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse." R.C. 2907.01(A).

{¶34} "Sexual contact" is defined as "any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person." R.C. 2907.01(B).

Restraint on Liberty

{¶35} Mr. Honzu contends there was insufficient evidence that he attempted to restrain the victim.

{¶36} In *State v. Butcher*, 11th Dist. Portage No. 2011-P-0012, 2012-Ohio-868, this court explained:

{¶37} "A person's liberty is restrained when the offender limits the victim's freedom of movement in any fashion for any period of time. *State v. Totarella*, 11th Dist. No. 2009-L-064, 2010-Ohio-1159, ¶ 118; *see also State v. Woodson*, 8th Dist. No. 95852, 2011-Ohio-2796, ¶ 13. Consequently, the element of restraint does not depend on 'the manner a victim is restrained. Rather, it depends on whether the * * * restraint is such as to place the victim in the offender's power and beyond immediate help, even though temporarily. * * * [Thus], the restraint involved need not be actual confinement, but may be merely compelling the victim to stay where [she] is.' Committee Comments to R.C. 2905.01. *See also State v. Walker*, 9th Dist. No. 2750-M, [1998 WL 597881, *2] (Sept. 2, 1998)." *Id.* at ¶ 71. *See also State v. Garcia*, 8th Dist. Cuyahoga No. 107027, 2022-Ohio-3426, ¶ 51; *State v. Elam*, 2016-Ohio-5619, 76 N.E.3d 391, ¶ 48 (8th Dist.).

{¶38} The state introduced evidence through the victim's testimony, her police statement, photographs, and surveillance video that revealed Mr. Honzu approached the victim's driver's side door, threatened her with a knife, and told her to move over, blocking the door. When she escaped through the passenger door, Mr. Honzu grabbed her with enough force to rip her clothing. That is more than sufficient evidence from which a trier of fact could find, beyond a reasonable doubt, that Mr. Honzu attempted to compel the victim to stay in her vehicle.

{¶39} For example, in *Totarella*, the appellant challenged, in relevant part, his conviction for abduction, which included "restraining the liberty of another." *Id.* at ¶ 118. We rejected the appellant's claim that the act of pulling the victim toward the backseat of her vehicle, if believed, did not constitute a restraint of her liberty, determining that "the element of restraining another's liberty may be proven by evidence that the defendant has 'limit[ed] one's freedom of movement in any fashion for any period of time.'" *Id.*, quoting *State v. Wright*, 8th Dist. Cuyahoga No. 92344, 2009-Ohio-5229, ¶ 23.

{¶40} Mr. Honzu contends the Supreme Court of Ohio set forth a "significant restraint of movement standard" in *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31. That case, however, is inapplicable, and no such standard exists for the amount of restraint necessary to sustain a conviction for kidnapping or attempted kidnapping. The court in *Davis* was determining whether there was sufficient evidence of "significant restraint" to support a conviction for kidnapping separate from the restraint that was merely incidental to the killing itself. *Id.* at ¶ 198. The court concluded there was sufficient evidence to support the appellant's conviction for kidnapping pursuant to R.C. 2905.01(A)(4), separate and apart from the murder, because there was evidence the victim was restrained for some period of time prior to the murder. *Id.* at ¶ 199-200.

See also State v. Cook, 65 Ohio St.3d 516, 524, 605 N.E.2d 70 (1992) (sufficient evidence to conclude the appellant, at gunpoint, moved and restrained the victim's liberty to a degree sufficient to uphold a kidnapping conviction in addition to his convictions for aggravated robbery and aggravated-murder specifications); *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 49 (affirming kidnapping conviction because there was sufficient evidence of restraint where the appellant bound the victims' hands for a period of time prior to the murder).

For the Purpose of Sexual Activity

{¶41} Mr. Honzu also contends the state failed to introduce sufficient evidence he intended to restrain the liberty of the victim for the purpose of engaging in sexual activity.

{¶42} The Supreme Court of Ohio explained R.C. 2905.01(A)(4) prohibits the removal or restraint of another for the purpose of engaging in sexual activity with the person and "requires only that the restraint or removal occur for the purpose of non-consensual sexual activity—*not that sexual activity actually take place.*" (Emphasis added.) *State v. Powell*, 49 Ohio St.3d 255, 262, 552 N.E.2d 191 (1990), *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89, 102, 684 N.E2d 668 (1997), fn. 4. *Accord State v. Worley*, 164 Ohio St.3d 589, 2021-Ohio-2207, 174 N.E.3d 754, ¶ 61.

{¶43} The state introduced data collected from Mr. Honzu's cell phone that showed bank credit card transactions for two other car washes on the same evening and that he had accessed pornography throughout those five hours, including in the minutes prior to the incident. We agree with the trial court "[t]his is strong circumstantial evidence of [Mr. Honzu's] motivation for his actions in this case" and "this shows a pattern of behavior and a plan of seeking out a victim and an opportunity." It is well settled

"'circumstantial evidence and direct evidence inherently possess the same value.'" *State v. Walker*, 2012-Ohio-3303, 974 N.E.2d 1213, ¶ 44 (11th Dist.), quoting *Jenks*, *supra*, at paragraph one of the syllabus.

{¶44} Thus, the state introduced sufficient evidence from which a trier of fact could find, beyond a reasonable doubt, that Mr. Honzu attempted to restrain the liberty of the victim for the purpose of engaging in sexual activity.

{¶45} Mr. Honzu's first assignment of error is without merit.

Ineffective Assistance of Counsel

{¶46} In his second assignment of error, Mr. Honzu contends his trial counsel were ineffective because they failed to file motions to suppress the evidence collected from his vehicle and cell phone since the warrants were not supported by probable cause. He further argues the cumulative errors of counsel, which he lists in six numbered points, deprived him of a fair trial.

{¶47} "'In evaluating ineffective assistance of counsel claims, Ohio appellate courts apply the two-part test enunciated by the United States Supreme Court in *Strickland v. Washington* (1984), 466 U.S. 668[, 104 S.Ct. 2052, 80 L.Ed.2d 674] * * *. * * * First, it must be determined that counsel's performance fell below an objective standard of reasonableness. Second, it must be shown that prejudice resulted. "Prejudice exists when 'the result of the trial would have been different' but for counsel's ineffectiveness."'" (Internal citations omitted.) *State v. Allen*, 11th Dist. Lake No. 2011-L-157, 2013-Ohio-434, ¶ 15, quoting *State v. Woodard*, 11th Dist. Ashtabula No. 2009-A-0047, 2010-Ohio-2949, ¶ 11.

{¶48} In applying the foregoing standard, a reviewing court indulges a strong presumption that counsel's conduct is within the wide range of reasonable professional

representation. *Strickland* at 689. An attorney's arguably reasoned strategic or tactical decisions do not generally constitute ineffectiveness. *State v. Phillips*, 74 Ohio St.3d 72, 85, 656 N.E.2d 643 (1995).

Failure to File Motions to Suppress

{¶49} Mr. Honzu contends he was deprived of the effective assistance of counsel because his trial counsel failed to file motions to suppress evidence seized from the inventory search of his vehicle at the time of arrest, as well as evidence from searches of his vehicle and cell phone because the warrants were not supported by probable cause.

{¶50} When an ineffective assistance claim is predicated upon the failure to submit a motion to suppress particular evidence, "an appellant must point to evidence in the record showing there was a reasonable probability the result of [the] trial would have differed if the motion had been filed or pursued." *State v. Gaines*, 11th Dist. Lake Nos. 2006-L-059 and 2006-L-060, 2007-Ohio-1375, ¶ 17. "'Hence, to establish prejudice, an appellant must prove more than a mere *possibility* that the motion could have been granted; rather, he or she must show a *reasonable probability* that, but for the omission, the result of the proceedings would have been different.'" (Emphasis sic.) *Allen* at ¶ 17, quoting *State v. DelMonico*, 11th Dist. Ashtabula No. 2003-A-0022, 2005-Ohio-2902, ¶ 20.

Inventory Search

{¶51} "Inventory searches involve administrative procedures conducted by law enforcement officials and are intended to (1) protect an individual's property while it is in police custody, (2) protect police against claims of lost, stolen or vandalized property, and (3) protect police from dangerous instrumentalities." *State v. Mesa*, 87 Ohio St.3d 105, 108, 717 N.E.2d 329 (1999). "Because inventory searches are administrative caretaking

functions unrelated to criminal investigations, the policies underlying the Fourth Amendment warrant requirement, including the standard of probable cause, are not implicated." *Id.* "Rather, the validity of an inventory search of a lawfully impounded vehicle is judged by the Fourth Amendment's standard of reasonableness." *Id*.

{¶52} To satisfy the requirements of the Fourth Amendment to the United States Constitution, an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedure(s) or established routine. *State v. Hathman*, 65 Ohio St.3d 403, 604 N.E.2d 743 (1992), paragraph one of the syllabus.

{¶53} Dep. Hughes testified to the inventory search he and Dep. Carr performed when they arrested Mr. Honzu. He also explained the purpose of an inventory search is "to log any potential valuables inside the vehicle to protect * * * the operator of the vehicle, the sheriff's office and the tow company." He further testified crack cocaine was found in plain sight, as well as pieces of the smoking device Mr. Honzu threw against the closed passenger window and pieces of a Chore Boy brillo pad. Those were collected as evidence, and the rest of the items in the vehicle were photographed before the vehicle was towed. On cross-examination, Dep. Hughes testified he did not want to "say yes or no," but it was common practice for items to be moved so photographs could be taken of items that were covered.

{¶54} As our review indicates, the deputy testified to the standardized procedure. More fundamentally, the only items seized during the inventory search were illegal contraband in plain view. "'It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.'" *State v. Morgan*, 2019-Ohio-2785, 140 N.E.3d 171, ¶

30 (5th Dist.), quoting *Harris v. United States*, 390 U.S. 234, 236, 88 S.Ct.992, 19 L.Ed.2d 1067 (1968) (finding counsel was not ineffective for failing to file a motion to suppress an inventory search of the appellant's vehicle where the officer testified to the standard police procedure and drugs located in the center console were in plain view).

{¶55} Since there is no reasonable probability the motion to suppress the inventory search of Mr. Honzu's vehicle would have been granted, defense counsel were not ineffective for failing to file a motion to suppress on those grounds.

Search Warrants

{¶56} Mr. Honzu similarly contends defense counsel were ineffective for failing to file motions to suppress the evidence seized from the searches of his vehicle and cell phone because the warrants lacked probable cause.

{¶57} "A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized." R.C. 2933.22(A).

{¶58} Pursuant to R.C. 2933.23, "affidavit for search warrant," "[a] search warrant shall not be issued until there is filed with the judge or magistrate an affidavit that particularly describes the place to be searched, names or describes the person to be searched, and names or describes the property to be searched for and seized; that states substantially the offense in relation to the property and that the affiant believes and has good cause to believe that the property is concealed at the place or on the person; and that states the facts upon which the affiant's belief is based. The judge or magistrate may demand other and further evidence before issuing the warrant. If the judge or magistrate is satisfied that grounds for the issuance of the warrant exist or that there is probable

cause to believe that they exist, he shall issue the warrant, identifying in it the property and naming or describing the person or place to be searched."

{¶59} A review of the warrants and supporting affidavits reveal they are not facially defective and "particularly describe" the vehicle and cell phone to be searched and items/data to be seized. For instance, the warrant for Mr. Honzu's vehicle identifies the vehicle and the property to be searched and seized, which includes a non-exhaustive list of the items identified in the inventory search that were likely to be related to the crime of kidnapping. The affidavit by a Trumbull County Sheriff's Office detective sets forth the facts of the crime, including the knife Mr. Honzu used to threaten the victim, how Mr. Honzu was identified by the car wash surveillance system and credit card transactions, how Mr. Honzu was apprehended in the vehicle in a half-naked intoxicated state, what the inventory search revealed, Mr. Honzu's sex offender status, and the items sought to be search and seized.

{¶60} Likewise, the warrant for Mr. Honzu's cell phone identifies that the phone was located in Mr. Honzu's vehicle during the inventory search and that it was likely to contain location information/data and app-based data that was evidence of the crime of kidnapping. The affidavit by the same detective similarly set forth the facts of the crime and the data from the cell phone that was sought to be searched and seized.

{¶61} Based on our review, there is no reasonable probability the motions to suppress the searches of Mr. Honzu's vehicle and his cell phone would have been granted. Thus, defense counsel were not ineffective for failing to file motions to suppress on those grounds. *See State v. Benedict*, 2022-Ohio-3600, 198 N.E.3d 979, ¶ 47-53 (3d Dist.) (the appellant failed to establish ineffective assistance of counsel where search-

warrant was not facially defective and affidavit sufficiently stated sufficient facts to identify what places law enforcement could search and what items to seize).

Cumulative Error

{¶62} Lastly, Mr. Honzu's appellate brief contains a list he contends are errors of defense counsel that, taken cumulatively, deprived him of a fair trial. These errors include the faulty search warrants; failure to object to the state's leading questions during its direct examination of the victim and Det. Altiere, who testified regarding the cell phone data; and defense counsels' objection to the state's offer of two of Mr. Honzu's prior convictions.

{¶63} This recitation of errors, however, fails to allege any prejudice he suffered as a result. For example, Mr. Honzu contends the failure to object to the leading questions of the victim and Det. Altiere led to testimony on "material issues damaging to defendant." To succeed on a claim of ineffective assistance of counsel based on counsel's failure to file an objection, an appellant must demonstrate that the objection had a reasonable probability of success. *State v. Stroud*, 11th Dist. Ashtabula Nos. 2022-A-0032, 2022-A-0033, and 2022-A-0034, 2023-Ohio-569, ¶ 53. If the objection would not have been successful, the appellant cannot prevail on a claim of ineffective assistance of counsel. *Id.* Mr. Honzu failed to allege defense counsel would have been successful if they had objected to the state's leading questions.

{¶64} Similarly, Mr. Honzu does not identify why or how defense counsels' objection to the state's introduction of two of his prior convictions resulted in prejudice. Certified copies of his prior convictions were admitted into evidence despite defense counsels' objection. "'A reviewing court may not second-guess decisions of counsel which can be considered matters of trial strategy.'" *Stroud* at ¶ 50, quoting *State v. Conley*, 2015-Ohio-2553, 43 N.E.3d 775, ¶ 56 (2d Dist.). "'Debatable strategic and

tactical decisions may not form the basis of a claim for ineffective assistance of counsel, even if, in hindsight, it looks as if a better strategy had been available.'" *Id.* at ¶ 50, quoting *Conley* at ¶ 56.

{¶65} In sum, Mr. Honzu has failed to establish defense counsel were ineffective in any of the instances he cites. As the Supreme Court of Ohio succinctly explained in *State v. Graham*, 164 Ohio St.3d 187, 2020-Ohio-6700, 172 N.E.3d 841, "[e]ach assertion of ineffective assistance of counsel going to cumulative error depends on the merits of each individual claim; when none of the individual claims of ineffective assistance of counsel have merit, cumulative error cannot be established simply by joining those meritless claims together." *Id.* at ¶ 170.

{¶66} Mr. Honzu's second assignment of error is without merit.

{¶67} The judgment of the Trumbull County Court of Common Pleas is affirmed.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.