

[Cite as *State v. Wilson*, 2004-Ohio-2838.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 03AP-592 (C.P.C. No. 02CR-2556)
Gregory O. Wilson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on June 3, 2004

Ron O'Brien, Prosecuting Attorney, and *Susan E. Day*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Gregory O. Wilson, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas upon a jury verdict finding him guilty of one count of aggravated murder, a violation of R.C. 2903.01, one count of aggravated arson, a violation of R.C. 2909.02, and one count of felonious assault, a violation of R.C. 2903.11. For the following reasons, we affirm appellant's aggravated murder conviction and reverse and remand for resentencing.

{¶2} The following facts are taken from the testimony adduced at appellant's trial. On June 13, 2000, appellant, who had been arguing earlier that day with his girlfriend, Melissa Spear, approached a parked car within which Ms. Spear was seated, and poured gasoline from a beer bottle over her head. When Ms. Spear exited the vehicle, appellant ignited her with his cigarette lighter, setting her body on fire. As Ms. Spear became engulfed in flames, and while bystanders attempted to assist her, appellant walked away and down the street as if nothing had happened. (Tr. Vol. III, at 85.) He never returned to the scene to inquire about Ms. Spear's condition.

{¶3} When paramedics arrived, they established an intravenous line in order to administer pain medication. One paramedic described Ms. Spear's burns as the worst he had ever seen. (Id. at 70.) Another witness described her prior to the fire as "blonde, real pretty, young" but after the fire as "totally black, no hair, laying there with her skin melted off of her, the flesh looked like wax melted. She was black, looking up at me saying help me." (Id. at 86-87.)

{¶4} Ms. Spear was transported from the scene to The Ohio State University Hospital. When she arrived, she presented with primarily third-degree burns on her face, neck, trunk, arms, hands and thighs. She was put into a medically induced coma and placed on a respirator. She remained in a coma and on a respirator for 45 days. During this time, she underwent ten surgeries during which Dr. Gayle Gordillo excised her burn wounds and placed synthetic skin dressing or skin grafts onto the wound sites.

{¶5} Upon her release from the hospital's burn unit, she was transferred to The Ohio State University's rehabilitation facility at Dodd Hall. The hospital's discharge summary noted that Ms. Spear indicated that her pain was a "10" on a scale of one to 10,

with "10" representing the worst pain she had ever felt. (Defendant's Ex. "2.") Upon her release from the rehabilitation facility, she began treating with The Ohio State University pain clinic and also with Dr. Connie McCoy at The Ohio State University Family Practice Center in New Albany, Ohio. Dr. McCoy's primary treatment goals were to monitor Ms. Spear for infection and to address her chronic pain and post-traumatic anxiety and depression. According to Dr. McCoy, Ms. Spear was also seeing other professionals for issues related to contraction and scarring that resulted in decreased mobility of the limbs and joints.

{¶6} Ms. Spear's various doctors prescribed Neurontin, Ultram and Methadone for pain. Dr. McCoy testified that Neurontin is particularly helpful with the severe nerve-ending pain associated with third-degree burns. The Ultram was prescribed for use at night because it helps with sleep. Ms. Spear was also prescribed Zoloft and Buspar for symptoms of post-traumatic stress, including depression and anxiety. She was prescribed Vioxx, which is an anti-inflammatory and is also useful for pain. She also took Zyban, which is an antidepressant helpful in assisting smoking cessation, and Valium, which treated her anxiety.

{¶7} Dr. McCoy testified that, although she had prescribed the Ultram to be taken at night at a dosage of 50 milligrams, at a certain point in the course of her treatment of Ms. Spear, the patient told her she had been taking 200 milligrams per night. Dr. McCoy testified she was concerned that Ms. Spear had undertaken this increased dosage without first consulting the doctor. When the prosecution inquired as to the reason for this concern, Dr. McCoy testified that one can safely take 150 to 200 milligrams of Ultram at a time, but this should be done "over time" in consultation with the

treating physician. Dr. McCoy also testified that, during an office visit on March 1, 2001, Ms. Spear became confrontational when she requested but was refused an additional prescription for Valium.

{¶8} On March 18, 2001, five days before her 30th birthday, Ms. Spear's seven-year-old son found her lying dead in her bed. Appellant was charged with one count of aggravated murder, one count of aggravated arson and one count of felonious assault, in connection with Ms. Spear's death. At the conclusion of a three-day trial, a jury found appellant guilty on all counts. On May 15, 2003, following a pre-sentence investigation, the court sentenced appellant to imprisonment for 20 years to life on the aggravated murder conviction, 10 years on the aggravated arson conviction and 8 years on the felonious assault conviction. The court ordered the 10-year arson sentence to be served consecutively to the 20-year aggravated murder sentence, and the 8-year felonious assault sentence to be served concurrently with the aggravated arson sentence. Thus, appellant was sentenced to a term of 30 years to life in prison.

{¶9} Appellant timely perfected an appeal to this court, and presents two assignments of error for our review, as follows:

I. THE TRIAL COURT COMMITS REVERSIBLE ERROR BY IMPOSING SENTENCE WITHOUT FIRST ASKING THE DEFENDANT WHETHER HE WISHES TO EXERCISE THE RIGHT OF ALLOCUTION CREATED BY CRIM. R. 32(A).

II. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE DEFENDANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION AND WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶10} With respect to appellant's first assignment of error, the state concedes that the trial court failed to provide appellant with the opportunity to exercise his right of allocution. The record so reflects. Accordingly, appellant's first assignment of error is sustained, and this matter will be remanded to the trial court for a new sentencing hearing.

{¶11} With respect to appellant's second assignment of error, he argues that the evidence was insufficient to support his conviction for aggravated murder, and that the verdict on this charge was against the manifest weight of the evidence. He contends that the state failed to prove the element of causation beyond a reasonable doubt. Specifically, appellant argues that the nine-month lapse of time between his act of setting Ms. Spear on fire and her eventual death; her doctors' testimony that she had been recovering extremely well from her burn injuries; evidence that she "overuse[d] drugs including crack cocaine and marijuana"¹; evidence that Methadone was present in her body at toxic to lethal levels; and evidence that she could have died from a cardiac arrhythmia caused by high levels of Amitriptyline, render the verdict of guilty beyond a reasonable doubt on the aggravated murder charge unsupported by the manifest weight and sufficiency of the evidence.

{¶12} The Supreme Court of Ohio outlined the role of an appellate court presented with a sufficiency of evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus:

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

¹ Brief of appellant, at 12.

defendant's guilt beyond a reasonable doubt. 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. * * *

See, also, *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶13} This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. Rather, the sufficiency of evidence test "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, supra, at 319. Accordingly, the weight given to the evidence and the credibility of witnesses are issues primarily for the trier of fact. *State v. Thomas* (1982), 70 Ohio St.2d 79, 80, 434 N.E.2d 1356.

{¶14} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." Under this standard of review, the appellate court weighs the evidence in order to determine whether 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." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541. The appellate court, however, must bear in mind the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances, when "the evidence weighs heavily against the conviction." *Thompkins*, supra, at 387.

{¶15} Appellant's second assignment of error requires us to review the concept of the element of causation in criminal cases, as well as the evidence adduced at appellant's trial, in light of the foregoing standards of review.

{¶16} A causal connection between the criminal agency and the cause of death is an essential element in a conviction for murder in the first or second degree. *State v. Cochrane* (1949), 151 Ohio St. 128, 84 N.E.2d 742, paragraph one of the syllabus. Thus, "the state must produce evidence to support each link in the chain of causation between the defendant's criminal act and the eventual death of the victim." *State v. Beaver* (1997), 119 Ohio App.3d 385, 392, 695 N.E.2d 332. Causation must be both direct and proximate. *Ibid.*

{¶17} "Where the statute involves a specified result that is caused by conduct, it must be shown, as a minimal requirement, that the accused's conduct was an antecedent 'but for' which the result in question would not have occurred. This means that an accused's conduct must at least be a physical cause of the harmful result. But mere physical causation is not always enough; a particular physical cause is enough only when it is a cause of which the law will take cognizance. This idea has been implemented by requiring that the harmful result in question be the natural and probable consequence of the accused's conduct; if the physical causation is too remote, the law will not take cognizance of it." *Ibid.*, quoting 1 Torcia, *Wharton's Criminal Law* (15 Ed. 1993) 146-48, Section 26.

{¶18} Proximate causation is the strongest if the victim dies immediately or shortly after being injured by the defendant. "But if the victim lingers for a substantial period of time, there may arise a question whether the death came at a time too remote from the

injury to say for certain that the accused caused it." *Beaver*, supra, at 394. However, a defendant is not relieved of culpability for the natural consequences of inflicting serious wounds on another merely because the victim later died of complications brought on by the injury. *State v. Tanner* (1993), 90 Ohio App.3d 761, 771, 630 N.E.2d 751. The injuries inflicted by the defendant need not be the sole cause of death, as long as they constitute a substantial factor in the death. *State v. Johnson* (1977), 60 Ohio App.2d 45, 52, 395 N.E.2d 368, affirmed (1978), 56 Ohio St.2d 35, 381 N.E.2d 637. The length of time between the act and the result is only one consideration in assessing the prosecution's showing of proximate cause. See *State v. Swiger* (1966), 5 Ohio St.2d 151, 155-56, 214 N.E.2d 417. Furthermore, "[i]t is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." *State v. Johnson* (1978), 56 Ohio St.2d 35, 39, 381 N.E.2d 637. Accord *State v. Lott* (1990), 51 Ohio St.3d 160, 168, 555 N.E.2d 293; *State v. Losey* (1985), 23 Ohio App.3d 93, 491 N.E.2d 379.

{¶19} The controlling authorities make it clear that the passing of nine months between appellant's act of setting Ms. Spear on fire and her eventual death does not, alone, render appellant's conviction for aggravated murder reversible. The questions for the trier of fact were whether appellant's actions were a "substantial factor" in Ms. Spear's death, and whether her death was a "natural and probable result" of appellant's actions. *Johnson*, supra.

{¶20} The case of *State v. Swiger*, supra, is instructive in this regard. In that case, the defendant severely beat the victim during the course of a robbery. Fourteen days later, while her doctor was planning to discharge the victim from the hospital, she

suddenly died. It was determined by autopsy that the victim died from a massive pulmonary embolism. On appeal, the defendant challenged his conviction for first-degree murder, arguing the evidence did not demonstrate that his actions were the proximate cause of the victim's death. The Supreme Court of Ohio affirmed, noting that evidence at trial established that the embolism could form in any person if that person were confined to bed. The court pointed out that the victim would not likely have been confined to bed for 14 days but for the injuries she sustained at the defendant's hands, and she was so confined as a direct result thereof.

{¶21} In *Swiger*, expert testimony and other evidence overweighed the lapse of time between the defendant's act and the victim's death. Likewise, in the present case, the state presented expert testimony sufficient to establish beyond a reasonable doubt that appellant's actions were the legal cause of Ms. Spear's death.

{¶22} The coroner's report listed the "immediate cause" of Melissa Spear's death as "Post Burn Pulmonary Disease." The report also found that the death was "a consequence of" a condition known as "Polypharmacy." (State's Ex. "M.") Dr. Patrick Fardal, chief forensic pathologist for Franklin County, conducted the autopsy of Ms. Spear, and certified the coroner's report. Dr. Fardal's external examination revealed extensive thermal injuries that had healed or were in the process of healing, over most of her body. Internally, Dr. Fardal found no significant abnormalities except for the lungs and airway, as well as the soft tissues underneath the skin. He testified that his internal examination revealed a great deal of scarring in the soft tissue underneath the burns. (Tr. Vol. V, at 23.)

{¶23} With respect to the lungs, Dr. Fardal found thickening and scarring of the upper airway, which could have been caused either by the long period of time during which Ms. Spear had been intubated through the use of a tracheostomy, or by inhalation injury caused by breathing in hot materials. Dr. Fardal further testified that Ms. Spear had massive pulmonary emphysema, as well as septal fibrosis. Dr. Fardal explained that this includes scarring of the lungs and pleural adhesions, which usually indicate the decedent suffered pneumonia at some point in the past. (Id. at 24-26.) The internal examination further revealed scarring and destruction of the tissues that contain blood vessels responsible for oxygen and carbon dioxide exchange within the pulmonary air space. Dr. Fardal further testified that Ms. Spear had, "inflammatory cells in her upper airway with chronic inflammation and hyper secretion of mucus in the glands that are in the airways" as well as "scarring and destruction of the cartilage," which, according to Dr. Fardal, was probably caused by the long-term tracheostomy. (Id. at 26.)

{¶24} Dr. Fardal testified that pulmonary emphysema occurs in people who smoke cigarettes, but he opined that Ms. Spear's injuries were far too extensive for a 29-year-old smoker. He testified that the damage that had occurred in Ms. Spear's lungs would not occur naturally in a smoker until at least their 40s or 50s. (Id. at 28.)

{¶25} Dr. Fardal's toxicology investigation revealed the presence of Gabapentin (a medication for pain management also known by the name Neurontin) at therapeutic levels; Bupropion (an antidepressant sometimes known as Wellbutrin) at therapeutic levels; Guaifenesin (an over-the-counter medication used to control airway secretions) at therapeutic levels; Methadone (a synthetic opiate and pain reliever) at elevated levels; nicotine; Valium (a central nervous system depressant sometimes known as Diazepam)

at therapeutic levels; Diphenhydramine (an antihistamine and a sedative, the active ingredient in Benadryl) at therapeutic levels; Sertraline (a selective serotonin reuptake inhibitor "SSRI" antidepressant sometimes known by the brand name Zoloft) at therapeutic levels; Amitriptyline (an antidepressant also known as Elavil) and Nortriptyline, the metabolite of Amitriptyline, at elevated levels; and marijuana metabolites.

{¶26} Dr. Fardal testified that the elevated levels of Amitriptyline could have caused a cardiac arrhythmia in Ms. Spear, but also noted that some members of the medical community believe that Amitriptyline cannot cause cardiac arrhythmia. (Id. at 57.) He testified that he observed nothing upon which to base a conclusion that Ms. Spear did, in fact, suffer a cardiac arrhythmia. He explained that cardiac arrhythmia is typically listed as a cause of death when the decedent has no prior history of disease or disorder and dies mysteriously. However, in a case such as that of Melissa Spear, where the decedent was suffering from lung disease and extensive thermal injuries, and where polypharmacy is also present, cardiac arrhythmia would not be suspected as a cause of death. (Id. at 65-66.) Moreover, the coroner's report reveals that an examination of Ms. Spear's heart indicated, "[n]o significant pathology." (State's Ex. "M," at 3.) Accordingly, we find no merit in appellant's contention that the evidence supported the conclusion that Ms. Spear died as a result of a cardiac arrhythmia, and that such an event severed the causal link between appellant's actions and Ms. Spear's death.

{¶27} The coroner's report notes that "polypharmacy" was involved as a cause of Ms. Spear's death. Specifically, the report explains, "Sertraline has an inductive or inhibitory effect on many of the liver P-450 enzymes that are involved in the metabolism

of other drugs and its own metabolism. Most of the other drugs present are also CNS² depressants. There is sufficient polypharmacy to be contributory to cause of death." (State's Ex. "M," at 2.)

{¶28} James Ferguson, chief toxicologist and director of forensic toxicology for the office of the Franklin County Coroner, further explained the nexus between Sertraline (Zoloft) and the condition known as polypharmacy. He explained that all of the SSRIs, "interfere with the * * * metabolic process of the liver and they can alter the liver's ability to remove some other drugs from the body." (Tr. Vol. V, at 82-83.) Mr. Ferguson went on to explain:

Here you have three drugs that are antidepressants that we discussed so far that have three different chemistries associated with them and all of them requiring the liver to transform them into something that can be eliminated by the body. If that elimination is interfered with, then you have levels backing up in the blood.

(Id. at 84.)

{¶29} Consistent with the verdict contained in the coroner's report, Mr. Ferguson opined that polypharmacy "contributed to [Ms. Spear's] cause of death." When asked to expound upon this conclusion, he testified that multiple central nervous system depressants "interact additively." (Id. at 88.) He went on to explain that, in "overdose" amounts, the tricyclic antidepressants interfere with the nerve impulses being conducted to and from the heart, and also inhibit respiration. (Id. at 89.)

{¶30} At trial, Dr. Fardal explained the coroner's findings with respect to the cause of death as follows:

² This stands for "central nervous system."

Well, Melissa has a combination of two entities in her. One is she has lung disease that can be related to the incident that took her to the hospital and she has inflammation, et cetera, destruction of tissues of her lung that I described and also all these pharmacological agents that were prescribed for her for her different conditions and some of them were elevated at the time of death. So if we had -- if Melissa was a person without any burns, et cetera and say for whatever reason her lung -- all the rest of the autopsy was exactly the same and there was no drugs present and all we had was these changes in her lungs and her upper airway for whatever reason -- that would be a separate -- that would be all by itself a cause of death.

If we didn't have any of this lung disease, and we had these drugs present in the same amounts as Melissa has at the time of death, for whatever reason they were prescribed for her, the drugs would be listed as the primary cause of death. And since we have two entities in her and no one was present at the time of death, that we kind of linked the two together because in our estimation they were related to the same event and why they were there.

* * *

[T]he pharmaceuticals didn't cause the lung disease. The incident caused the lungs -- -- and the subsequent hospitalization caused the lung disease. And then the polypharmacy were prescribed drugs for diseases that Melissa had, as far as we could determine, subsequent to that incident.

So they're both linked to the same initial entity. So we put both of them together because we cannot per se separate both of them out.

(Id. at 36-37.) He went on to note that Ms. Spear's lung problems alone could have caused her death. (Id. at 58.) However, because polypharmacy was also present it was listed as a contributing factor in her death. (Id. at 65.)

{¶31} Later, on cross-examination, Dr. Fardal further explained the causal connection, from a forensic pathology standpoint, between appellant's act and the death of Ms. Spear.

If Melissa Spear came as a 29 year old female to our office and all she had was these lung problems with the scarring and all that on the outside of her body, et cetera, that's what we would list as her cause of death was thermally-related lung disorders and that's, you know, an inhalation of materials and also the therapy in the hospital causes problems also. The ventilatory therapy. So we don't have anything where we can actually separate what's due to the actual initial fire that caused the burns versus the secondary effects of being in the hospital being treated for those burns, et cetera. So we have a combination thereof.

So if we had nothing else on Melissa, no drugs, no other naturally occurring diseases, that's what we would put down as the cause of death.

(Id. at 59.)

{¶32} On cross-examination, Mr. Ferguson testified that if Ms. Spear had taken more than the prescribed dosage of one or more antidepressants, this would have aggravated her polypharmacy condition. (Id. at 92.) However, both Dr. Fardal and Mr. Ferguson explained that a patient who has suffered from severe burn-related injuries for many months would develop a certain degree of tolerance for the pain and depression medications Ms. Spear had been taking; as such, levels that would be considered "toxic" or "lethal" to the average person might not be toxic or lethal to such a patient. (Id. at 64 and 78, respectively.) Dr. Fardal explained that the word "lethal" as used in the coroner's report, means, "if you have that amount in you, * * * if you're not accustomed to this element that that would be a cause of death." (Id. at 46.)

{¶33} Upon our review of the record, we perceive abundant evidence upon which the jury could have reasonably and rationally concluded beyond a reasonable doubt that Ms. Spear's lung disease and polypharmacy precipitated her death and were the natural, reasonable and probable results of appellant's voluntary act of setting Ms. Spear on fire.

{¶34} We find no support in the record for appellant's assertion on appeal that Ms. Spear could have died from an overuse or overdose of crack cocaine and marijuana. The state never denied that Ms. Spear had been a user of crack cocaine prior to June 13, 2000. However, no cocaine was detected in her blood or urine during her autopsy. (Tr. Vol. V., at 42.) Dr. Fardal testified that the autopsy revealed the presence of marijuana metabolites in Ms. Spear's blood and urine; however, he testified that this only meant "she had exposed herself to marijuana sometime before her death." (Id. at 33.) When asked whether Ms. Spear was "high on marijuana at the time she died" Mr. Ferguson replied:

No, she was not. This is a very low level of cannabinoid. * * *
In fact, this may represent days, weeks or even months past use depending upon her body weight and size, ratio of fat to lean, and when she last stopped how heavy a user she was and then when she ceased.

(Id. at 85-86.)

{¶35} We likewise find no merit to appellant's assertion that the high levels of Methadone present in Ms. Spear's body constitute an intervening or superseding cause of her death. The coroner's report does indicate that this drug was present at "toxic to lethal levels." However, Dr. Fardal responded affirmatively when appellant's trial counsel asked, "[s]o toxic to one person might not be toxic for another person?" Dr. Fardal explained that "lethal" means, "if you have that amount in you, that again, if you're not

accustomed to this element that that would be a cause of death." (Id. at 46.) He went on to explain that those persons who abuse the substance need an elevated level of the drug in order to achieve the desired physical effect; therefore, they could tolerate a level that, for others, would be lethal. (Ibid.)

{¶36} Dr. Fardal testified that he was unaware that Ms. Spear suffered from any adverse reactions or side effects from any of the medications she had taken. (Id. at 63.) He also stated that it would be reasonable for a woman who had been suffering the effects of severe burn injuries for over nine months to have developed a tolerance to some of the drugs that were in Ms. Spear's system. He agreed that what would be toxic or lethal to others would not be toxic or lethal to Ms. Spear. (Id. at 64.) Additionally, Mr. Ferguson testified that the level of Methadone present in Ms. Spear is "not necessarily high for an individual who is in chronic pain." (Id. at 78.) This evidence lends no support to appellant's contention that his aggravated murder conviction was unsupported by the weight and sufficiency of the evidence.

{¶37} Finally, we are unpersuaded that the testimony of Ms. Spear's treating physicians demonstrates that appellant's actions were not the direct and proximate cause of her death. Appellant directs our attention to the testimony of Dr. Gordillo, who stated Ms. Spear was doing "extremely well," and her life was no longer threatened by her burn injuries when Dr. Gordillo last saw her in January 2001. (Tr. Vol. IV, at 188.) Further, Dr. Gordillo testified that she was surprised to learn of Ms. Spear's death, "[b]ecause I thought she was doing so well." (Id. at 193.) Dr. Gordillo also expressed surprise at the coroner's finding that Ms. Spear had sustained extensive damage to her lungs as a result of the burn. She testified, "I didn't see that she had a lung injury as a consequence of a

burn." (Ibid.) However, Dr. Fardal testified that Ms. Spear's lung scarring would not necessarily be apparent to a treating physician unless the physician ordered pulmonary function tests, x-rays or biopsies. (Tr. Vol. V, at 29.) Dr. Gordillo testified that she did not check for damage to the interior aspects of Ms. Spear's respiratory system because the emergency room physicians noted the absence of indications that she had inhaled any burned material into her lungs. Further, she was aware that Ms. Spear had been burned outdoors; this meant that there was no "known inhalational component." As such, Dr. Gordillo was not concerned about any lung injuries; rather, she focused on Ms. Spear's skin injuries, and on completing successful skin grafts. (Tr. Vol. IV, at 179.)

{¶38} Appellant also directs our attention to Dr. McCoy's testimony, wherein she stated that, prior to the March 1st visit when Ms. Spear demanded Valium, she had been doing much better and, "was dealing with things a little bit better." (Id. at 106.)

{¶39} None of the testimony of Ms. Spear's two treating physicians persuades us that no rational trier of fact could have found that appellant's actions were the direct and proximate cause of Ms. Spear's death. We find equally unavailing appellant's contention that the jury somehow lost its way in weighing the evidence and finding appellant guilty of aggravated murder.

{¶40} The evidence supports the jury's finding that, but for appellant's act of intentionally dousing Melissa Spear with gasoline and igniting her entire body before she could get away, Ms. Spear would not have been in a medically induced coma and on a ventilator for 45 days, and would not have sustained severe damage to her respiratory system. She likewise would not have suffered from severe and chronic pain, and post-traumatic anxiety and depression, necessitating (at least in her physicians' opinions)

multiple pharmaceutical therapies, at least one of which presented a risk that some of the others would eventually fail to properly metabolize in her system. Moreover, the evidence sufficiently demonstrates that the physical maladies that brought about the death of Ms. Spear were the natural, probable and foreseeable results of appellant's conduct. In short, there was sufficient evidence presented upon which the jury could have rationally concluded that appellant's act of setting Melissa Spear ablaze was the direct and proximate cause of both of the physical conditions that the coroner determined precipitated her death.

{¶41} Accordingly, we find appellant's conviction for aggravated murder was supported by sufficient evidence to convince a rational trier of fact that appellant's intentional act was the legal cause of the death of Ms. Spear. We further find that the jury's verdict is supported by the manifest weight of the evidence, and the jury did not lose its way in convicting appellant of aggravated murder.

{¶42} Appellant's first assignment of error is sustained and his second assignment of error is overruled. Appellant's conviction on the charge of aggravated murder is affirmed, the judgment of sentence is reversed, and this cause is remanded to the Franklin County Court of Common Pleas with instructions to conduct a new sentencing hearing.

*Judgment affirmed in part, reversed in part;
cause remanded with instructions.*

BRYANT and WATSON, JJ., concur.
