[Cite as *State v. Kelley*, 2009-Ohio-6441.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
WILLIAM LAMAR KELLEY	:	Case No. 2008CA00294
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2008CR0643A
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 7, 2009

APPEARANCES:

For Plaintiff-Appellee

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Farmer, P.J.

{¶1} On June 6, 2008, the Stark County Grand Jury indicted appellant, William Lamar Kelley, on one count of murder as a proximate result of felonious assault in violation of R.C. 2903.02 and R.C. 2903.11, one count of murder as a proximate result of child endangering in violation of R.C. 2903.02 and R.C. 2919.22, one count of felonious assault in violation of R.C. 2903.11, and one count of child endangering in violation of R.C. 2919.22. Said charges arose from the death of one year old Mizia Sisson. Appellant and the child's mother, Crystal Sisson, had been living together for a short time.

{¶2} A jury trial commenced on December 1, 2008. The jury found appellant guilty of murder as a proximate result of child endangering and child endangering. By judgment entry filed December 23, the trial court sentenced appellant to an aggregate term of fifteen years to life in prison.

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

I

{¶4} "THE TRIAL COURT'S FINDING OF GUILT IS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

II

{¶5} "THE TRIAL COURT'S (SIC) ABUSED ITS DISCRETION BY IMPROPERLY PRECLUDING THE APPELLANT FROM CROSS EXAMINING WITNESSES AND DENYING HIM HIS RIGHT TO DUE PROCESS."

III

{¶6} "THE APPELLANT WAS DEPRIVED OF DUE PROCESS OF LAW BY THE MISCONDUCT OF THE PROSECUTOR."

IV

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION BY IMPROPERLY ADMITTING GRUESOME AND IRRELEVANT PHOTOGRAPHS RESULTING IN A DENIAL OF THE APPELLANT'S RIGHT TO DUE PROCESS."

I

{¶8} Appellant claims the verdicts were against the sufficiency and manifest weight of the evidence. We disagree.

{¶9} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307. On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury 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. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be

exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶10} We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881. The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger,* 77 Ohio St.3d 415, 418, 1997-Ohio-260.

{¶11} Appellant was convicted of murder as a proximate result of child endangering in violation of R.C. 2903.02(B) and R.C. 2919.22 and child endangering in violation of R.C. 2919.22 which state the following, respectively:

{¶12} "[R.C. 2903.02(B)] No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

{¶13} "[R.C. 2919.22] No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support."

{¶14} Appellant argues the sole witness against him, the deceased child's mother, Crystal Sisson, was "inherently unreliable resulting in insufficient evidence for three reasons": 1) she provided multiple inconsistent statements, 2) she was "motivated

to provide an account of events designed to exonerate herself," and 3) the case lacked sufficient collaborating physical evidence. Appellant's Brief at 10.

{¶15} On March 30, 2008, Ms. Sisson and her two children, Brianna age two and Mizia age one, together with appellant, checked into the Chase Motel in Canton, Ohio, after calling a "hotline" for help. Vol. II T. at 198-199. During the evening, Ms. Sisson fell asleep and was awakened by Mizia crying. Id. at 222. She testified she observed appellant place Mizia on a dresser and jerk the child off by his feet, causing him to hit his head on the floor. Id. at 223-224, 229. Ms. Sisson testified appellant did this three times. Id. at 232-234. She did nothing because she was afraid. Id. at 234. Appellant picked the child up and placed him on the bed. Id. at 236. The child's lip was bleeding. Id. at 234-235. Ms. Sisson got a wet washcloth and appellant wiped the child's lip. Id. at 237-238. The child was not doing anything while appellant was wiping his lip. Id. at 238. The child "[w]ent to sleep." Id. Ms. Sisson never saw the child awake again after the incident. Id. at 243.

{¶16} The next day, Ms. Sisson awoke and appellant stated the child "was up all night puking." Id. at 246. Ms. Sisson then went to the welfare office by herself. Id. at 244. Sometime after returning to the Chase Motel, they checked out and "moved" to the Perry Inn. Id. at 255-256. While carrying Mizia to the Perry Inn, Ms. Sisson noticed the child's lips were blue and he was having trouble breathing. Id. at 284-285. Upon arriving at the Perry Inn, Ms. Sisson and appellant noticed Mizia was not breathing. Id. at 264. Ms. Sisson called 911 and appellant started CPR. Id. When the paramedics arrived, the child was cold to the touch, but still had a pulse. Id. at 65-66. The child had vomit on his shirt. Id. at 65.

{¶17} Ms. Sisson told the paramedics the child "had been throwing up for the last couple of days, she thought that he choked on it and stopped breathing." Id. at 67. She told a nurse at the hospital in response to the question as to whether the child could have been hit, "[n]ot by me." Vol. IV T. at 68. Ms. Sisson told the nurse the child had crawled up onto a dresser and had fallen off, but Ms. Sisson also said the child was not walking yet. Id. Ms. Sisson told a certified child life specialist at the hospital the child "had been vomiting and had stopped breathing, choking on his vomit." Vol. III T. at 272. Ms. Sisson also stated the child had climbed onto a dresser and had fallen, and neither she nor appellant had struck the child. Id. at 274. She told the police the child had fallen from the dresser; that appellant had placed the child on top of the dresser, struck the child in the back of the head with a closed fist two times, and pulled the child off the dresser by his feet three or four times, causing the child to strike his head and back. Id. at 39-40. Originally, Ms. Sisson claimed appellant "didn't do anything to the child." Id. at 60.

{¶18} Appellant told the police he did not understand why the child was so severely injured. Id. at 35. Appellant stated when they arrived at the Chase Motel, the child was sick and had been vomiting. Id. The child crawled up on a dresser and had fallen off, although appellant stated he "didn't directly witness it, ah, he heard the child hit the floor and it appeared as though the child had fallen off the bed there in that room." Id. at 35-36. Appellant also explained that Brianna "oftentimes played rough with Mizia***and that she would oftentimes knock him down." Id. at 36.

{¶19} Clearly variations of the account of the incident were reported by appellant and Ms. Sisson. However, we find sufficient collaborating evidence to support the jury's decision on the final account of the child's injuries.

{¶20} Blood and vomit were only found on appellant's clothing, not Ms. Sisson's. Id. at 222, 238-241. Summit County Deputy Medical Examiner, Dorothy Dean, M.D., a forensic pathologist, testified the "child's brain was severely damaged and massively swollen" as a result of "blunt impacts to the head." Id. at 124, 160. She opined the injuries she observed were inconsistent with a "simple fall" as from a 24" high bed or a 27" high dresser. Id. at 161, 164-165. The injuries were consistent with a throw to the floor. Id. at 165.

{¶21} All of this evidence is coupled with the fact that appellant complained about the child crying and vomiting all night on March 30, 2008 and he was alone with the child on the morning of March 31, 2008.

{¶22} Upon review, we find sufficient credible evidence to support the jury's guilty verdicts, and no manifest miscarriage of justice.

{¶23} Assignment of Error I is denied.

II

{¶24} Appellant claims he was denied the right to effectively cross-examine key witnesses and to present his defense expert. We disagree.

{¶25} The admission or exclusion of evidence lies in the trial court's sound discretion. *State v. Sage* (1987), 31 Ohio St.3d 173. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*

(1983), 5 Ohio St.3d 217. We note harmless error is described as "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Crim.R. 52(A). Overcoming harmless error requires a showing of undue prejudice or a violation of a substantial right.

{¶26} Appellant argues pursuant to Evid.R. 616, he was precluded from cross-examining Ms. Sisson and others on the issue of prior parenting history and pecuniary consideration. Evid.R. 616 governs methods of impeachment and states the following:

{¶27} "**(A) Bias**

{¶28} "Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

{¶29} **"(B) Sensory or mental defect**

{¶30} "A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

{¶31} **"(C) Specific contradiction**

{¶32} "Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony. If offered for the sole purpose of impeaching a witness's testimony, extrinsic evidence of contradiction is inadmissible unless the evidence is one of the following:

{¶33} "(1) Permitted by Evid. R. 608(A), 609, 613, 616(A), 616(B), or 706;

{¶34} "(2) Permitted by the common law of impeachment and not in conflict with the Rules of Evidence."

{¶35} Appellant first argues that during voir dire, the trial court prohibited defense counsel from asking the jurors if they knew anyone or had any experiences with the Department of Job and Family Services. Vol. I T. at 242-244. The trial court denied this broad questioning, but told defense counsel he could ask the jurors about specific people and potential witnesses. Id. We find this denial did not impact the cross-examination of Ms. Sisson.

{¶36} During the cross-examination of Ms. Sisson, appellant sought to cross-examine her about her family's involvement with family services i.e., whether she came from an abusive home and her history with her other children:

{¶37} "MR. MACK:***Ah, we may be able to demonstrate that people who have suffered abuse themselves have a history, when they have that kind of history, they also be the kind of people that continue, ah, abuse with their own children, Judge.

{¶38} "***

{¶39} "MR. MACK:***These people have a right to know who this woman is. And I guess while we're here, I think that it's appropriate that this Court allows us to indicate her own history, which reflects her neglect with her other children. This case has everything to do with neglect and abuse-related issues. And I think that a jury should hear her background information with respect to that.

{¶40} "***

{¶41} "MR. MACK: The issue is who's responsible for the injuries to Mizia. I think it's relevant that this jury could hear that if this woman's had a history of neglecting her children***then she's more likely to be the person responsible for abusing this child, that, even the records - - and I'm not going to try and get into the records, but they

reflect a consistent disinterest in her children, a desire not really to mother her children, and if she has no desire to mother her children, Judge, then just maybe it's more convenient for her to continue her life with Mr. Kelley, ah, and not have Mizia in her life. Ah, I think it's absolutely relevant." Vol. II T. at 300-305.

{¶42} The trial court reminded defense counsel that Ms. Sisson was not on trial and defense counsel argued:

{¶43} "MR. MACK: In this matter, Your Honor, but still, her motive with respect to why she would not want this kid around, her intent, those are reasons why 404(B) evidence comes in." Id. at 306.

{¶44} Before the trial court were defense counsel's assertions that (1) Ms. Sisson grew up in an abusive home and (2) Ms. Sisson neglected her other children. It is appellant's position that somehow these experiences would have had an impact on Ms. Sisson's credibility or would have somehow cast her in a light as the perpetrator of the subject offense. The trial court found these issues not to be relevant as to the question of who caused the child's death. Id. at 309.

{¶45} Evid.R. 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence on the character of a witness is generally not admissible:

{¶46} **"(A) Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, subject to the following exceptions:

{¶47} "**(3) *Character of witness*.** Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609." Evid.R. 404(A)(3).

{¶48} Evid.R. 608 governs evidence of character and conduct of witness. Subsection (B) states:

{¶49} "Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than conviction of crime as provided in Evid. R. 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if clearly probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness's character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified."

{¶50} Upon review, we find the trial court did not abuse its discretion in excluding cross-examination questioning on Ms. Sisson's prior involvement with family services.

{¶51} Appellant also challenges the trial court's ruling on Ms. Sisson's pecuniary consideration or motive for testifying:

{¶52} "[MR. MACK] Q. As a result of coming in here and testifying today, you have received a benefit, haven't you?

{¶53} "A. No.

{¶54} "Q. No?

{¶55} "A. You weren't told that you could plead guilty to child endangering, receive three years and you would not be charged with murder?

{¶56} "MS. HARNETT: Objection." Vol. II T. at 288.

{¶57} The trial court was in "the unique position to have had both of these cases assigned to me, as A and B cases. The indictment against Miss Sisson, to the best of my knowledge, was always endangering child." Id. at 291. The trial court had taken Ms. Sisson's plea, and was never "aware at any time that she was charged with murder" as the indictment "all the way through was child endangering." Id. The trial court sustained the objection and struck the question and answer and stated the following:

{¶58} "THE COURT: - - whether a person has a fear of being charged with something, whether a person is being charged with something, particularly when we go through grand jury proceeding, as I remember when I preside over swearing in grand juries, have talked about the grand jury proceedings, I used to be on your all side, I used to be on the state's side also, so I know the theoretical protection is of grand juries. This matter went before a grand jury. They chose not to indict her for murder. They chose to indict her for what they did. She pled guilty to that and she was sentenced, written plea agreement." Id. at 292-293.

{¶59} After the ruling, defense counsel elicited the following testimony from Ms. Sisson as to her motivation for testifying:

{¶60} "[MR. MACK] Q. Crystal, you pled guilty to child endangering, correct?

{¶61} "A. Yes.

{¶62} "Q. And as a result you only received three years of imprisonment, correct?

{¶63} "A. Yes.

{¶64} "Q. You agreed to testify against Mr. Kelley, correct?

{¶65} "A. Yes.

{¶66} "Q. Why?

{¶67} "A. Why? 'Cause he was lying about what he did.

{¶68} "Q. He was lying about what he did?

{¶69} "A. Yeah." Id. at 294-295.

{¶70} Defense counsel extensively cross-examined Ms. Sisson on her various statements. As we noted in Assignment of Error I, all of the inconsistencies were clearly included in the record.

{¶71} Upon review, we find the trial court did not abuse its discretion in forestalling a protracted questioning of Ms. Sisson on her plea.

{¶72} Lastly, appellant argues the trial court erred in excluding his defense expert, Elie Rizkala, M.D., a pediatric neurologist. The trial court conducted a hearing on Dr. Rizkala's qualifications as an expert, and reviewed the doctor's report (Court's Exhibit J). Vol. IV T. at 6-40.

{¶73} In support of Dr. Rizkala's testimony and report, defense counsel argued the following:

{¶74} "MR. MACK: Your Honor, if it please the Court, in our conversations with our expert, I think he's indicated that he is prepared to offer expert testimony as it relates to the cause of the injury, the timing of the injury. I believe that based on testimony that's been presented in Court, ah, there will be some hypotheticals posed to him and I think once he's received that information, he can offer an expert opinion as to

whether or not within a reasonable degree of medical scientific certainty as to whether or not that is a plausible set of events. That's what we wish to use him for, sir." Id. at 31.

{¶75} The prosecutor objected, basing it on the distinction between neurology and pathology:

{¶76} "[MS. HARTNETT] ***You're trying, they are trying to use him to get in things that are not in evidence. He's not the right expert for this. I quote from his report, The basis for my opinion is in the timing and mechanism of death of Mizia Sisson, and all of his conclusions are time of death. Not, not when, perhaps, ah, the - - he does talk about the mechanism of injury, but he, he makes conclusions that a pathologist must make. He specifically states that they are based upon the microscopic slides that were taken during the autopsy, the, he talks about the findings of the autopsy. This is a man who deals with live children. Not examining them after death. They are apples and oranges for purposes of being qualified, Your Honor." Id. at 34-35.

{¶77} Under Evid.R. 104(A), the trial court is the primary gatekeeper "concerning the qualification of a person to be a witness." In consideration of this rule, Evid.R. 702 provides for the testimony by experts and states the following:

{¶78} "A witness may testify as an expert if all of the following apply:

{¶79} "(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

{¶80} "(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

{¶81} "(C) The witness' testimony is based on reliable scientific, technical, or other specialized information.***"

{¶82} In denying Dr. Rizkala's testimony, the trial court noted the following:

{¶83} "THE COURT: There is a subspecialty of pathology, which is neuropathology. It's a subspecialty of anatomic pathology. Neurology is separate and distinct from pathology and all the subsets of pathology. Little knowledge is a dangerous thing, as I, the statement that we've all heard, and, ah, I am maybe guilty of that, because I spent a fair amount of time with some training and designated as an ASTAR judge. That's Advanced Science and Technology Adjudication. So one of the responsibilities of the Judge is to determine if a person should be allowed to testify and when I look at the report and what the counsel have provided for me as to what this witness is going to testify to, I have no question that he is a very competent physician, he's certified in neurology. I've taken some time last evening and this morning to look at some of the things that he has cited to, ah, but I do not see that he has the requisite qualifications and expertise to testify as to what he has in this report. So I'm not going to allow him to testify." Vol. IV T. at 36-37.

{¶84} In his brief at 20, appellant argues Dr. Rizkala would have testified as to whether Ms. Sisson's "reports as to the child's condition were consistent with the medical findings" which would have reflected on Ms. Sisson's credibility, and "how the actual injury could have occurred." The state counters that appellant now argues inconsistent theories. We disagree that appellant has changed his argument.

{¶85} Although no proffer was made, Dr. Rizkala's curriculum vitae and report were marked as exhibits (Court's Exhibits J and K). Vol. IV T. at 37-38. We have reviewed the exhibits.

{¶86} As noted by the trial court, Dr. Rizkala was not a forensic pathologist, but a pediatric neurologist with a concentration on cerebral palsy and publications in cerebella ataxia disorders, acute seizure management, and neurological complications associated with mycoplasma pneumonia. Dr. Rizkala admitted he has not been termed an "expert" for testifying at trial, although he consults on Metro Health Medical Center cases. He also consults regularly on pediatric patients with accidental and non-accidental traumatic brain injuries.

{¶87} Nothing within the curriculum vitae or accompanying letter qualifies Dr. Rizkala as an expert on the "mechanism" of death. While we find Dr. Rizkala's opinion as to cause and timing to be consistent with Dr. Dean's opinion, we find the trial court did not abuse its discretion in denying Dr. Rizkala's testimony. Any error would be harmless as cited supra.

{¶88} Assignment of Error II is is denied.

III

{¶89} Appellant claims he was denied a fair trial because of prosecutorial misconduct. We disagree.

{¶90} The test for prosecutorial misconduct is whether the prosecutor's comments and remarks were improper and if so, whether those comments and remarks prejudicially affected the substantial rights of the accused. *State v. Lott* (1990), 51 Ohio St.3d 160, certiorari denied (1990), 112 L.Ed.2d 596. In reviewing allegations of

prosecutorial misconduct, it is our duty to consider the complained of conduct in the contest of the entire trial. *Darden v. Wainwright* (1986), 477 U.S. 168.

{¶91} Further, Evid.R. 611 governs the mode and order of interrogation and presentation. Subsection (A) states the following:

{¶92} "**(A) Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

{¶93} Appellant argues the repeated use of leading questions during Ms. Sisson's direct examination led to an unfair trial.

{¶94} We concur with appellant's observations that the beginning of Ms. Sisson's direct testimony consisted of leading questions. The trial court permitted the leading questions to "set the stage" for the crime, but cautioned the prosecutor that she could not lead thereafter. Vol. II T. at 215.

{¶95} Unfortunately, the prosecutor did lead again in "recharacterizing" what Ms. Sisson had said about jerking the child to the floor. Id. at 225, 227. The trial court found the prosecutor was merely copying what Ms. Sisson had already done in her previous testimony. Id. at 227. After a few more questions, the trial court warned the prosecutor that she was getting "into what is some of the real crux of this matter" so the trial court was going to be very cautious "on which questions I'm going to allow." Id. at 231.

{¶96} As noted by the state, Ms. Sisson appeared to be intellectually challenged and therefore some leading questions, at least in the preliminary stages, were appropriate. We find the remainder of Ms. Sisson's direct did not deny appellant a fair trial. Ms. Sisson was able to describe what she observed without suggestion and when asked, responded to directional, layout, and sequence questions.

{¶97} Assignment of Error III is denied.

IV

{¶98} Appellant claims the trial court erred in admitting into evidence gruesome autopsy photographs of the child. We disagree.

{¶99} In *State v. Maurer* (1984), 15 Ohio St.3d 239, paragraph seven of the syllabus, the Supreme Court of Ohio held the following:

{¶100} "Properly authenticated photographs, even if gruesome, are admissible in a capital prosecution if relevant and of probative value in assisting the trier of fact to determine the issues or are illustrative of testimony and other evidence, as long as the danger of material prejudice to a defendant is outweighed by their probative value and the photographs are not repetitive or cumulative in number."

{¶101} The photographs were displayed to the jury during the direct examination of Dr. Dean. Dr. Dean used the photographs to distinguish between trauma areas and non-trauma areas regarding the child's injuries. The photographs sought to demonstrate the mechanism and timing of the injuries. Vol. III T. at 134-164.

{¶102} State's Exhibits 11 A-Y are of the decedent and although unpleasant, are not gruesome. State's Exhibits 11 Z and AA-KK are photographs of the decedent's

brain and are gruesome, but were part of Dr. Dean's testimony in explaining the mechanism of the injuries.

{¶103} Upon review, we find the trial court did not err in admitting the photographs.

{¶104} Assignment of Error IV is denied.

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

By Farmer, P.J.

Hoffman, J. and

Delaney, J. concur.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Patricia A. Delaney_____

JUDGES

SGF/sg 1105

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
WILLIAM LAMAR KELLEY	:	
Defendant-Appellant	:	Case No. 2008CA0294

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ Patricia A. Delaney_____

JUDGES