**[Cite as *State v. Buckley*, 2017-Ohio-9358.]**

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| | | JUDGES: |
| STATE OF OHIO | : | Hon. W. Scott Gwin, P.J. |
| | : | Hon. William B. Hoffman, J. |
| Plaintiff-Appellee | : | Hon. Earle E. Wise, J. |
| | : | |
| -vs- | : | |
| | : | Case No. 2017CA00084 |
| ERIN JEAN BUCKLEY | : | |
| | : | |
| Defendant-Appellant | : | OPINION |

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| CHARACTER OF PROCEEDING: | Criminal appeal from the Stark County Court of Common Pleas, Case No. 2016CR2188(A) |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | December 29, 2017 |

APPEARANCES:

| For Plaintiff-Appellee | For Defendant-Appellant |
|---|---|
| JOHN FERRERO<br>STARK COUNTY PROSECUTOR<br>BY: RONALD MARK CALDWELL<br>110 CENTRAL PLAZA SOUTH<br>CANTON, OH 44702 | BERNARD L. HUNT<br>2395 MCGINTY ROAD N.W.<br>NORTH CANTON, OH 44720 |

*Gwin, P.J.*

**{¶1}** Appellant Erin Jean Buckley ["Buckley"] appeals her conviction and sentence after a jury trial in the Stark County Court of Common Pleas.

*Facts and Procedural History*

**{¶2}** On November 14, 2016, shortly after seven o'clock in the evening, Canton Police Detective Darrell Pierson was working an off-duty job at the Canton Walmart. For such jobs, Pierson would be in uniform, and was assigned for this particular job to stand by the general merchandise doors to handle any problems with customers walking out without paying for merchandise. Walmart had many problems with this kind of theft, and thus Pierson positioned himself by the cash register that was closest to the exit doors.

**{¶3}** While working this job, Pierson saw a female identified as Buckley walk down the action alley aisle, which is past the registers, and heading towards the exit doors, avoiding the sensors. Buckley had a large duffel bag on her shoulder, and Pierson could see merchandise inside it. In addition, Buckley was walking briskly. Suspecting a possible shoplifting, Pierson approached Buckley and asked her to come with him. As Buckley made it through the exit doors, however, she turned back, looked at Pierson, and took off running.

**{¶4}** Pierson responded by running after Buckley, who headed straight for a green four-door car parked nearby. He could still see the unpaid merchandise inside Buckley's duffel bag as he caught up to her, so he grabbed her arm in order to effect an arrest. Buckley managed to slip out of her coat in trying to get away. Troy Anthony Gordon, who was sitting in the front passenger seat of this car, got out, grabbed Pierson's

wrist, and attempted to pull the detective's hand off Buckley[1]. In response to this action, Pierson pulled his baton out and ordered Gordon not to interfere and to get back into the car. Due to the distraction, Buckley was able to get into the rear passenger seat of the car. Gordon got into the front passenger seat.

**{¶5}** Pierson thought that the car might try to drive away, so he went to the rear of the car to get its license plate number. Going to the front of the vehicle would have put Pierson between the car and another parked ear. As he was reading off the license plate number, Pierson saw the reverse lights of the car go on. Pierson immediately ordered the driver to stop or he would shoot, having drawn his handgun. Pierson heard the driver of the car say that he — Pierson — would not get out of the way. Getting out of the way, Pierson holstered his gun and went to the driver's window with his baton. His repeated orders to stop the car and for all of the occupants to put their hands were being ignored, so Pierson broke out the driver's window with is baton. During this melee, Pierson also called for backup.

**{¶6}** Unbeknownst to Pierson, several bystanders observed this confrontation. George Jordan, a retired Perry Township police officer, went to assist Pierson when he saw the commotion upon leaving the store with his wife. As he approached the car, ready to draw his handgun, Jordan watched as Buckley opened the rear passenger door in an effort to pick up the duffel bag she had dropped when Pierson first grabbed her. Pierson was on the driver's side of the vehicle, trying to get the car to stop. Jordan saw that Pierson's repeated orders were being ignored.

[1] Gordon's conviction is the subject of a separate appeal in *State v. Gordon*, 5th Dist. Stark No. 2017CA00073.

**{¶7}** John Bowman was in his electric cart when he saw the commotion involving Pierson and Buckley. He was also leaving the store and was going to get in his van, which was parked nearby in the handicap section. Bowman heard Pierson yell at the people in the car to stop, and saw the detective take out his baton, smashing the driver's window. Bowman estimated that Pierson gave some 30 commands, all of which were ignored. He also saw the car back up and almost hit Pierson, which scared Bowman quite a bit.

**{¶8}** Bonnie Davis, the mother of a Canton police officer, was waiting in her parked car in the parking lot for her granddaughter to get off work at Walmart. As she was waiting, she heard the commotion at a car that was three to four feet away from her. She saw Pierson trying to stop the escape of the people in the car, which led to Pierson standing behind the car, gun drawn, ordering them to stop. Fearing for the Pierson's safety, Davis called 9-1-1 on her cell phone. The car, she testified, could have hit Pierson, as it was initially backing up. While on the phone, she heard Pierson order the driver to put his hands on the wheel, heard glass being broken, and saw the car driving away after a cruiser pulled up and another officer joined the chase.

**{¶9}** Canton Police Officer Brian Dougherty responded to the Walmart parking lot in response to Pierson's call for backup. Arriving in his cruiser, the uniformed officer found Pierson, gun drawn, yelling commands at the trio of suspects. Dougherty also drew his gun and barked similar commands at the suspects. Instead of complying, the car backed up and left the scene. Dougherty jumped back in his cruiser and gave chase, lights and siren on, stopping the fleeing vehicle several blocks or miles away. The occupants again did not comply with his orders about putting their hands up and getting

out of the vehicle. Once Gordon was pulled out of the vehicle and handcuffed, the other two became more compliant and exited the car without incident.

**{¶10}** Detective Pierson remained behind at the Walmart parking lot. Pierson retrieved the duffel bag and had Walmart personnel determine the value of the stolen merchandise. Buckley had attempted to shoplift items totaling a little over $300, mainly female apparel and clothing. Pierson also retrieved the security camera video of Buckley's activities both inside and outside the store.

**{¶11}** The three individuals were all charged with one count of aggravated robbery as principal offenders or alternatively as accomplices. The charge arose from the use of their get-away car as a deadly weapon against one of the police officers who was trying to stop these individuals' escape. The other charges included in the indictment were specific to the individual defendants' conduct.

**{¶12}** The driver of the car opted to plead guilty on the day of trial, and Buckley opted to plead guilty to the identity theft charge during the trial and her resisting arrest charge was dismissed.

**{¶13}** Gordon and Buckley were tried together and the jury found Gordon and Buckley guilty of these offenses. The trial court thereafter sentenced Gordon to an eight-year prison term for the aggravated robbery. The court also sentenced Buckley to an aggregate prison term of eight years.

*Assignments of Error*

**{¶14}** Buckley raises two assignments of error,

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

**{¶16}** "II. THE DEFENDANT WAS DENIED HER EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1 SECTION 10 OF THE CONSTITUTION FOR THE STATE OF OHIO."

I.

**{¶17}** In her first assignment of error, Buckley challenges the sufficiency and manifest weight of the evidence that was presented at trial and which resulted in a jury's verdict of guilty. She argues that she was in the backseat of the car, did not have control of the car and was attempting to exit the car before the car backed up and left the scene. [Appellant's Brief at 5].

**STANDARD OF APPELLATE REVIEW.**

**{¶18}** When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence, and consider the credibility of witnesses. *State v. Thompkins*, 78 Ohio St.3d 380, 386–387, 678 N.E.2d 541 (1997), *superseded by constitutional amendment on other grounds as stated by State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668, 1997–Ohio–355. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa*, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. Murphy*, 4th Dist. Ross No. 07CA2953, 2008–Ohio–1744, ¶ 31. Because the trier of fact sees and hears the witnesses and is particularly competent to decide whether, and to what extent, to credit the testimony of particular witnesses, the appellate court must afford substantial deference to its determinations of credibility. *Barberton v. Jenney*, 126 Ohio St.3d 5, 2010–Ohio–2420, 929 N.E.2d 1047, ¶ 20.

> "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *
>
> "If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment."

**{¶19}** *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting 5 Ohio Jurisprudence 3d, Appellate Review*, Section 60, at 191–192 (1978). Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. *State v. Picklesimer,* 4th Dist. Pickaway No. 11CA9, 2012–Ohio–1282, ¶ 24.

**{¶20}** Once the reviewing court finishes its examination, an appellate court may not merely substitute its view for that of the jury, but must find that " '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. Thompkins, supra,* 78 Ohio St.3d at 387, quoting State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720–721(1st Dist. 1983). Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." Id.

ISSUE FOR APPEAL.

**{¶21}** A. Whether the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

1. Sufficiency of the Evidence.

**{¶22}** Buckley was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1) that provides,

> (A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:
>
> (1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;
>
> * * *

**{¶23}** R.C. 2923.03(A)(2) sets forth the elements for complicity and provides that,

> No person, acting with the kind of culpability required for the commission of an offense, shall * * * [aid or abet another in committing the offense [.]

**{¶24}** With respect to the requirements for a conviction for complicity by aiding and abetting, the Supreme Court of Ohio has stated,

> To support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. Such intent may be inferred from the circumstances surrounding the crime.

**{¶25}** *State v Johnson,* 93 Ohio St.3d 240, 2001-Ohio-187, 749 N.E.2d 749, at syllabus. "'Participation in criminal intent may be inferred from presence, companionship and conduct before and after the offense is committed.' (Citations omitted)." *State v. Mendoza*, 137 Ohio App.3d 336, 342, 738 N.E.2d 822(3rd Dist. 2000), *quoting State v. Stepp*, 117 Ohio App.3d 561, 568–569, 690 N.E.2d 1342(4th Dist. 1997).

**{¶26}** R.C. 2901.22(B) defines knowingly,

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

**{¶27}** In the case at bar, Buckley comes out of the Walmart with a large duffel bag filled with merchandise. A uniformed police officer who commanded her to stop was pursuing her. As she arrived at the car, Gordon got out and intervened on her behalf, allowing Buckley to slip out of her coat and the grasp of the police officer and re-enter the vehicle. Gordon got back into the car and the car backed up nearly striking the officer. The car then sped away.

**{¶28}** In the case at bar, the jury observed video evidence from a security camera at Walmart, a police cruiser and a bystander that displayed the events in real time. The jury heard the testimony of five witnesses concerning the actions, verbal commands and actions of each of the parties.

**{¶29}** Viewing this evidence in a light most favorable to the prosecution, we conclude that a reasonable person could have found beyond a reasonable doubt that, at the very least, Buckley had aided and abetted in committed the crime of aggravated

robbery. We hold, therefore, that the state met its burden of production regarding aggravated robbery and, accordingly, there was sufficient evidence to support Buckley's conviction.

**{¶30}** 2. Manifest weight of the evidence.

**{¶31}** The Ohio Supreme Court has emphasized: " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *.' " *Eastley v. Volkman*, 132 Ohio St.3d 328, 334, 972 N.E. 2d 517, 2012–Ohio–2179, *quoting Seasons Coal Co., Inc. v. Cleveland,* 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting 5 Ohio Jurisprudence 3d, Appellate Review*, Section 603, at 191–192 (1978). Furthermore, it is well established that the trial court is in the best position to determine the credibility of witnesses. *See, e.g., In re Brown*, 9th Dist. No. 21004, 2002–Ohio–3405, ¶ 9, *citing State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212(1967).

**{¶32}** Ultimately, "the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact 'unless it is patently apparent that the fact finder lost its way.'" *State v. Pallai*, 7th Dist. Mahoning No. 07 MA 198, 2008–Ohio–6635, ¶ 31, *quoting State v. Woullard*, 158 Ohio App.3d 31, 2004–Ohio–3395, 813 N.E.2d 964 (2nd Dist. 2004), ¶ 81. In other words, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. Mahoning No.

99 CA 149, 2002–Ohio–1152, at ¶ 13, *citing State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125(7th Dist. 1999).

**{¶33}** The jury as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the trier of fact may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Craig,* 10th Dist. Franklin No. 99AP–739, 1999 WL 29752 (Mar 23, 2000) *citing State v. Nivens*, 10th Dist. Franklin No. 95APA09–1236, 1996 WL 284714 (May 28, 1996). Indeed, the trier of fact need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver*, 10th Dist. Franklin No. 02AP–604, 2003–Ohio–958, ¶ 21, *citing State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964); *State v. Burke*, 10th Dist. Franklin No. 02AP–1238, 2003–Ohio–2889, *citing State v. Caldwell*, 79 Ohio App.3d 667, 607 N.E.2d 1096 (4th Dist. 1992). Although the evidence may have been circumstantial, we note that circumstantial evidence has the same probative value as direct evidence. *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E.2d 492 (1991), paragraph one of the syllabus, *superseded by State constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89, 102 at n.4, 684 N.E.2d 668 (1997).

**{¶34}** In the case at bar, the jury heard the witnesses, viewed the evidence and heard Buckley's arguments and explanations about her actions. A rational basis exists in the record for crediting the testimony of the state's witnesses because they were simply onlookers with no affiliation toward any of the parties. Further, video evidence was

introduced from which the jury could determine for themselves the more credible version of the events.

**{¶35}** We find that this is not an "'exceptional case in which the evidence weighs heavily against the conviction.'" *State v. Thompkins*, 78 Ohio St.3d 380, 386–387, 678 N.E.2d 541 (1997), *quoting Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. The jury neither lost its way nor created a miscarriage of justice in convicting Buckley of the charge.

**{¶36}** Based upon the foregoing and the entire record in this matter, we find Buckley's conviction is not against the sufficiency or the manifest weight of the evidence. To the contrary, the jury appears to have fairly and impartially decided the matters before them. The jury heard the witnesses, evaluated the evidence, and was convinced of Buckley's guilt.

**{¶37}** Finally, upon careful consideration of the record in its entirety, we find that there is substantial evidence presented which if believed, proves all the elements of the crime for which Buckley was convicted.

**{¶38}** Buckley's first assignment of error is overruled.

II.

**{¶39}** In her second assignment of error, Buckley contends that she was denied the effective assistance of trial counsel. Specifically, Buckley cites to two incidents of alleged ineffectiveness: 1). trial counsel's failure to make a Crim.R. 29 motion for acquittal after the presentation of evidence; 2) trial counsel's failure to remove himself from the case when he discovered he was a friend of a key witness for the state, retired police officer George Jordan. Appellant's Brief at 7

**STANDARD OF APPELLATE REVIEW.**

**{¶40}** A claim of ineffective assistance of counsel requires a two-prong analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to appellant. The second prong is whether the appellant was prejudiced by counsel's ineffectiveness. *Lockhart v, Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180(1993); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373(1989).

**{¶41}** In order to warrant a finding that trial counsel was ineffective, the petitioner must meet both the deficient performance and prejudice prongs of *Strickland* and *Bradley. Knowles v. Mirzayance*, 556 U.S. 111, 129 S.Ct. 1411, 1419, 173 L.Ed.2d 251(2009).

**{¶42}** The United States Supreme Court discussed the prejudice prong of the *Strickland* test,

> With respect to prejudice, a challenger must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id., at 694, 104 S.Ct. 2052. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id., at 693, 104 S.Ct. 2052. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id., at 687, 104 S.Ct. 2052.
>
> "Surmounting Strickland's high bar is never an easy task." *Padilla v. Kentucky,* 559 U.S. ——, ——, 130 S.Ct. 1473, 1485, 176 L.Ed.2d 284 (2010). An ineffective-assistance claim can function as a way to escape

> rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U.S., at 689–690, 104 S.Ct. 2052. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id., at 689, 104 S.Ct. 2052; see also Bell v. Cone, 535 U.S. 685, 702, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002); *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S., at 690, 104 S.Ct. 2052.

**{¶43}** *Harrington v. Richter*, 562 U.S. 86, 104-105, 131 S.Ct. 770, 777-778, 178 L.Ed.2d 624(2011).

**{¶44}** The United States Supreme Court and the Ohio Supreme Court have held a reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Bradley*, 42 Ohio St.3d at 143, 538 N.E.2d 373, *quoting Strickland,* 466 U.S. at 697, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984).

ISSUES FOR APPEAL.

**{¶45}** A. Whether Buckley was prejudiced by his attorney's failure to make a Crim. R. 29 motion for acquittal.

**{¶46}** The Ohio Supreme Court has held that a failure to timely make a Crim.R. 29(A) motion during a jury trial does not waive an argument on appeal concerning the sufficiency of the evidence. *State v. Jones*, 91 Ohio St.3d 335, 346, 2001–Ohio–57, 744 N.E.2d 1163; *State v. Carter*, 64 Ohio St.3d 218, 223, 594 N.E.2d 595 (1992). In both *Jones* and *Carter*, the Court stated that the defendant's "not guilty" plea preserves his right to object to the alleged insufficiency of the evidence. Id. We have previously recognized that a Crim. R. 29 motion is not necessary to preserve the issue of sufficiency of the evidence for appeal. *State v. Henderson*, 5th Dist. Richland No. 2013–CA–0409, 2014–Ohio–3121, ¶ 22, *citing State v. Straubhaar*, 5th Dist. Stark No. 2008 CA 00106, 2009–Ohio–4757, ¶ 40.

**{¶47}** In light of our disposition of Buckley's first assignment of error, a motion for acquittal would not have been granted because sufficient evidence was contained in the record to sustain the conviction.

**{¶48}** Buckley has failed in her burden to demonstrate a reasonable probability that, but for counsel's failure to move for a judgment of acquittal, the result of the proceeding would have been different.

B. Whether Buckley was prejudiced by his attorney's failure to remove himself upon discovery that he was friends with a state's witness.

**{¶49}** As we noted in our statement of *Facts and Procedural History*, *supra,* George Jordan, a retired Perry Township police officer, went to assist Detective Pierson

when he, Jordan, saw the commotion upon leaving the store with his wife. As he approached the car, ready to draw his handgun, Jordan watched as Buckley opened the rear passenger door in an effort to pick up the duffel bag she had dropped when Pierson first grabbed her. Pierson was on the driver's side of the vehicle, trying to get the car to stop. Jordan saw that Pierson's repeated orders were being ignored.

**{¶50}** In the case at bar, the jury observed video evidence from a security camera at Walmart, a police cruiser and a bystander that displayed the events in real time. The jury heard the testimony of five witnesses concerning the actions, verbal commands and actions of each of the parties.

**{¶51}** The evidence showed that Buckley intended to get away along with her colleagues. She was willing to run to the car and pull away from Pierson's grasp. Buckley leaned out of the moving car in order to try to retrieve her duffel bag that she had dropped during the confrontation with Pierson. The jury could find that this evidence contradicts her contention that she was not willing to go along with her colleagues' intent to use the car to affect their successful escape. There is little if any probability that the admission of Jordan's testimony improperly affected the outcome of the trial.

**{¶52}** Buckley has failed in her burden to demonstrate a reasonable probability that, but for counsel's failure to remove himself from the case, the result of the proceeding would have been different.

**Conclusion.**

**{¶53}** Accordingly, because Buckley was not able to demonstrate that she was prejudiced by trial counsel's representation, Buckley's second assignment of error is overruled.

**{¶54}** The judgment of the Stark County Court of Common Pleas is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, Earle, J., concur