[Cite as *State v. Downard*, 2007-Ohio-2144.]

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

State of Ohio — Court of Appeals No. WD-05-086

Appellee — Trial Court No. 05-CR-052

v.

Rodney Downard — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: May 4, 2007

* * * * *

Raymond C. Fischer, Wood County Prosecuting Attorney,
Paul Dobson, Assistant Prosecuting Attorney, and
Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas that found appellant guilty of one count of aggravated murder and sentenced him to life imprisonment with parole eligibility after 20 years. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Appellant sets forth six assignments of error:

{¶ 3} "I. The trial court violated defendant-appellant's right against self incrimination by denying defendant-appellant's motion to suppress his pre-trial statements because they were involuntarily made.

{¶ 4} "II. The defendant-appellant was denied the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.

{¶ 5} "III. The trial court committed reversible error when it allowed hearsay evidence to be considered by the jury.

{¶ 6} "IV. The defendant-appellant was denied due process of the law in that because of the severe acoustical limitations and problems experienced during the course of the trial the defendant-appellant did not receive a fair trial.

{¶ 7} "V. The defendant-appellant was denied due process of the law in that due to acts of prosecutorial misconduct during the course of the trial the defendant-appellant did not receive a fair trial.

{¶ 8} "VI. The defendant-appellant's conviction on the charge of aggravated murder was against the manifest weight of the evidence."

{¶ 9} At 5:02 a.m. on January 12, 2005, appellant called 911 and reported that his wife had been stabbed. Appellant told the dispatcher that the only people in the house other than himself were his wife and their three children – Breynn, 8, Hawke, 6, and Hunter, 4. When the Wood County Sheriff's Deputies arrived several minutes later, appellant let them into the house. He showed them to a bedroom on the first floor where

they found appellant's wife, LuAnn Downard, lying on her back in bed with a knife in her chest. Only the handle of the knife protruded from her body. The victim's clothing and bedding were saturated with blood. Appellant told the deputies that he and his wife did not share a bedroom; he had come downstairs from his bedroom to find LuAnn "that way." An EMT pronounced LuAnn dead at the scene.

{¶ 10} According to a deputy, appellant smelled strongly of beer. He had what two deputies described as a "fresh scratch" on his face and blood stains on his hands, wrist, watch and pants. Appellant appeared to be "cool and calm." Appellant signed a permission to search form and, at approximately 8:45 a.m., he agreed to go to the sheriff's office to be interviewed.

{¶ 11} The interview was not recorded on video or audiotape. Testimony as to what transpired during the interview was provided by John Helm, an investigator with the Wood County Prosecutor's Office, and Wood County Sheriff's Detective Lieutenant Charles Frizzell. While appellant was being interviewed, Detective Sergeant Charles Below called from appellant's home to say deputies had found packaging for a kitchen knife in appellant's bedroom. When confronted with that information, appellant said the packaging was in his room because he had recently taken it away from the children. Detective Below called again to say that between appellant's top and bottom mattresses officers had found a "balled-up" towel with reddish-brown stains, similar stains on the mattresses and two latex gloves. Appellant denied knowing how the items got there. He requested and was permitted a restroom break. After the break, appellant stopped

insisting he had no idea what had happened and claimed instead that he simply could not remember. According to one of the detectives, in response to their questions he stated, "Well, if that's what you want me to say, I'll say that." Appellant then said that he had accidentally stabbed LuAnn when he tripped and fell on top of her while standing by her bed with the knife. Eventually, appellant admitted that he had intentionally stabbed LuAnn after he stood over her while she slept and considered whether to kill her. He stated that when he stabbed LuAnn, she sat up and screamed. Appellant also said she may have scratched him when he pushed her back down.

{¶ 12} On February 3, 2005, appellant was indicted on one count of aggravated murder in violation of R.C. 2903.01(A). Appellant entered a plea of not guilty. On April 18, 2005, appellant filed a motion to suppress the statements he made when he was interviewed by Helm and Frizzell on the day of the murder, claiming that the statements were not made voluntarily. Following a hearing, the trial court denied the motion.

{¶ 13} The case was tried to a jury and on September 30, 2005, a guilty verdict was returned. Appellant was sentenced to life imprisonment with parole eligibility after 20 years.

{¶ 14} In his first assignment of error, appellant asserts that the trial court erred by denying his motion to suppress the statements he made to investigating officers at the police station the day of the murder. Appellant asserts that his statements were not made voluntarily and that the officers' statements must be supported with extrinsic evidence such as a written statement executed by the defendant himself or by some type of

recording of the interrogation. Appellant argues that by failing to record the interview, the police denied him any protection against abusive and coercive conduct. He further argues that denial of the motion permitted his statements to be admitted with no opportunity for rebuttal other than through cross-examination of the officers or his own testimony. Appellant then suggests that he was forced to testify in order to rebut the officers' testimony as to his statements.

{¶ 15} Appellate review of a motion to suppress involves mixed questions of fact and law. *State v. Long* (1998), 127 Ohio App.3d 328, 332. At the hearing on the motion, the trial court acts as the trier of fact, evaluating the evidence and assessing the credibility of the witnesses. *State v. DePew* (1988), 38 Ohio St.3d 275, 277. The reviewing court is bound to accept the trial court's findings when they are supported by competent, credible evidence. *State v. Retherford* (1994), 93 Ohio App.3d 586, 592. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. Id.

{¶ 16} At the suppression hearing, one of the deputies who responded to the scene testified that he transported appellant to the sheriff's office in his patrol car at approximately 9:00 a.m. and that he placed appellant in handcuffs while in the car as a matter of policy. The deputy removed the restraints when appellant stepped out of the car and led appellant to an interview room where he sat at a table. The door remained open and the deputy stood outside of the room talking to appellant about the weather and appellant's work. At 10:30 or 11:00 a.m., the deputy asked appellant if he was hungry or

thirsty and appellant said no. During this time prior to the interview, the door to the room remained open. When the interview began at approximately noon, the door was shut. The deputy observed the interview from an adjacent room; he testified that he could not hear the words exchanged but saw no indication from appellant that he was upset or disturbed or wished to end the interview. He further testified that he did not see either of the detectives engage in any type of threatening behavior. After approximately two hours, appellant was permitted to use the rest room and get something to drink. The deputy was unsure how long the interview continued after the break. After appellant confessed to murdering LuAnn Downard, he was immediately taken to the jail.

{¶ 17} Investigator Helm testified that he read appellant his Miranda rights and that appellant acknowledged he understood and signed the form before the interview began. The signed form was admitted into evidence. Appellant then agreed to talk. Helm testified that he did not threaten appellant in any way during the interview and described the progression of the interview, leading up to appellant's confession. Helm testified that appellant showed very little emotion during the interview and had a flat affect, even when he finally confessed. As to the duration of the interview, which appellant claimed extended into the evening hours, Helm testified that it concluded at 4:00 or 4:30. Helm stated he and some of the officers ate dinner and discussed the investigation and then interviewed appellant's son at 5:30, which was documented as to date and time on the son's Miranda waiver. Helm stressed that at no time during the interview did appellant ask for food, to end the interview, or to have an attorney present.

{¶ 18} Detective Frizzell testified that after he arrived at the scene, he asked appellant if he would go to the sheriff's office to be interviewed and that appellant agreed. Frizzell estimated that the interview process began at approximately 12:45 p.m. and said appellant was cooperative throughout. Frizzell confirmed that appellant did not at any time ask to end the interview or to have an attorney present. Appellant did not ask for food at any time. The detective confirmed that they took a 15-minute break at approximately 3:00 p.m. and concluded shortly after 4:00 p.m. Frizzell also denied making any threats to appellant or brandishing a weapon during the interview.

{¶ 19} At the conclusion of the hearing, the trial court found that appellant had waived his right against self-incrimination, as shown by the signed waiver which was admitted into evidence. The trial court also found, based on the totality of the circumstances, that the interview was not coercive and appellant's statements were made voluntarily.

{¶ 20} Appellant suggests that the failure to either record the interview or obtain a signed written statement from him is an example of "coercive police tactics." However, appellant fails to explain or even suggest exactly how the officers "coerced" him into making any of the statements which he now describes as involuntary. Appellant suggests he was denied food from the time he arrived at the sheriff's office at 9:15 a.m. through the end of the interview at approximately 4:00 p.m. Testimony contradicts this claim, however, as several officers stated appellant was not interested in food when they asked him if he was hungry. Appellant would have us believe that not immediately providing

him with a meal and failing to record the interview renders involuntary any statements he made during that interview. We disagree.

{¶ 21} Most significant, of course, is the written waiver appellant signed before any of the questioning began. The trial court concluded that appellant validly waived his rights. The signed waiver form was admitted into evidence at the suppression hearing without objection.

{¶ 22} We further disagree with appellant that his statements were involuntary. For a defendant's inculpatory statements to be admissible at trial, it must appear that the defendant gave the statements voluntarily. See *State v. Chase* (1978), 55 Ohio St.2d 237, 246. "Evidence of police coercion or overreaching is necessary for a finding of involuntariness * * *." *State v. Eley* (1996), 77 Ohio St.3d 174, 178. See, also, *Colorado v. Connelly* (1986), 479 U.S. 157, 164; *State v. Hill* (1992), 64 Ohio St.3d 313, 318. Furthermore, in determining the voluntariness of an accused's confession, the court must employ the "totality of the circumstances" test. See *State v. Bays* (1999), 87 Ohio St.3d 15, 22; *Eley*, 77 Ohio St.3d at 178; *State v. Clark* (1988), 38 Ohio St.3d 252, 261. Under the "totality of the circumstances" test, the reviewing court should consider: (1) the age, mentality, and prior criminal experience of the individual; (2) the length, intensity, and frequency of the interrogation; (3) the existence of physical deprivation or mistreatment; and (4) the existence of threat or inducement. See *State v. Lynch* (2003), 98 Ohio St.3d 514, 522, ¶ 54; *Bays*, supra; *State v. Edwards* (1976), 49 Ohio St.2d 31, 40.

{¶ 23} In the case at bar, the totality of the circumstances demonstrates that appellant voluntarily gave his statements to the law enforcement officers. The record contains: (1) no evidence of coercion or overreaching; (2) no evidence of physical deprivation or mistreatment; and (3) no evidence of threat or inducement.

{¶ 24} Moreover, we disagree with appellant that his confession must be found to be involuntary because the detectives did not record it or because appellant did not write his own statement. Although we note that it may be the better practice for law enforcement officers to videotape a defendant's confession, the constitution does not require it. See, generally, *State v. Wiles* (1991), 59 Ohio St.3d 71, 83-84; *State v. Cedeno* (Oct. 23, 1998), Hamilton App. No. C-970465; *State v. Hodges* (1995), 107 Ohio App.3d 578, 588.

{¶ 25} Based on the foregoing, we find that the trial court did not err by overruling appellant's motion to suppress the statements that he gave to the detectives. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 26} Appellant's second assignment of error as to ineffective assistance of counsel will be addressed after we have considered each of his other assigned errors.

{¶ 27} In his third assignment of error, appellant sets forth a sweeping assertion that the trial court committed reversible error by allowing hearsay evidence. Appellant argues that the trial court improperly allowed testimony as to the victim's statements prior to her death, statements made by the victim's children during the course of the investigation, and "statements made by other witnesses." Appellant offers no argument

in support of his claims that the testimony referred to above constituted hearsay. In support of his claim, appellant simply lists parenthetically ten pages of trial transcript. He does not indicate which transcript excerpt applies to which instance of claimed hearsay, apparently trusting this court to do that which counsel was not willing to do and match the pages with the alleged hearsay statement.

{¶ 28} We have reviewed each of the segments of trial transcript cited by appellant as constituting hearsay. The first two citations occurred during voir dire of potential jurors and therefore do not constitute either evidence or hearsay. The third and fourth citations cannot even remotely be considered as examples of hearsay. Another of portion of the transcript cited by appellant as hearsay is found in a comment by the trial court and yet another is actually contained within a question the prosecutor asked the Wood County coroner concerning pooling of the victim's blood.

{¶ 29} Appellant cites another part of the coroner's testimony during which he explained the process of completing the report after the autopsy and filing it with the clerk of courts. There is no hearsay issue implicated in his testimony. Next, appellant cites two statements made by the investigator who responded to the scene. Defense counsel did not object to either statement. Appellant first cites the investigator's comment that one of the victim's children "made statements which clearly were of concern" regarding appellant's presence at or around the time of the murder. This testimony was offered in response to a question concerning when the investigators first began to look at appellant as a potential suspect. Second, appellant cites the

investigator's statement that he was concerned about the accuracy of information provided by the victim's children, in particular one child's comment that the knife was 50 feet long. The witness's statement was offered to illustrate that children often have distorted perceptions of traumatic events, not to prove the truth of the matter asserted. Neither of the portions of the investigator's testimony cited by appellant raises hearsay issues.

{¶ 30} Finally, appellant cites a statement made by a witness who dated appellant's son Zachary after the murder. In response to a question by the prosecutor regarding a three-way telephone conversation the witness had with Zachary and another friend, the witness testified that Zachary jokingly said "he should just stab us both." Defense counsel did not object to the statement. The relevance of this statement is questionable at best and it clearly was not offered to prove the truth of the matter asserted. In fact, if any significance is attached to the statement, it would appear to be to appellant's benefit as it could potentially be used to implicate Zachary.

{¶ 31} Based on the foregoing, we find that appellant's claims that hearsay was allowed have no merit. Accordingly, appellant's third assignment of error is not well-taken.

{¶ 32} In his fourth assignment of error, appellant asserts he was denied a fair trial because of "numerous acoustical problems" experienced in the courtroom throughout the five-day trial. Appellant asserts that because of those problems, there is reason to believe the jury could not or did not hear all of the evidence presented. Appellant cites to

instances during the trial where witnesses, attorneys or the court had to ask for questions to be repeated and asserts that efforts should have been undertaken to improve the situation.

{¶ 33} This court has reviewed the entire transcript of proceedings in the trial court. While it does appear that the acoustics in the courtroom were not ideal, any time a witness or attorney indicated he or she was unable to hear something, the question or answer was repeated. There is no indication that the flow of the trial was disrupted, as appellant claims, or that the jury was not able to hear portions of the testimony. We note that before voir dire began, the judge asked the prospective jurors if any of them had trouble hearing thus far. The judge acknowledged that the courtroom has some acoustical problems due to its age and design, and instructed them to raise their hand if they had trouble hearing at any time. He also inquired as to whether any of the prospective jurors had a serious hearing problem but received no response.

{¶ 34} Based on the foregoing, we find appellant's fourth assignment of error not well-taken.

{¶ 35} In his fifth assignment of error, appellant alleges several instances of prosecutorial misconduct. First, appellant suggests the prosecutor improperly attempted to prevent the admission of newly discovered exculpatory evidence. The evidence to which appellant refers was the testimony of a forensic scientist that hairs found on a blood-soaked glove discovered underneath appellant's mattress did not match appellant's DNA. When defense counsel cross-examined the witness as to the hair samples, the state

objected on the basis of a lack of foundation, arguing that the hair samples had not been produced, identified or authenticated. The trial court pointed out that the state essentially was attacking its own evidence and overruled the objection. While discussing the admissibility of various exhibits at the close of the state's case, defense counsel sought to admit the forensic scientist's "hair report." Eventually, the report and the hair sample were authenticated and the state withdrew its objection. The items were admitted into evidence.

{¶ 36} Appellant now argues that the prosecutor's objection to the testimony regarding the hair sample constituted prosecutorial misconduct. Appellant does not provide any support for this claim and does not show how he may have been prejudiced by the objection, other than to state the obvious - that the prosecutor attempted to prohibit the introduction of what was arguably exculpatory information. Appellant claims that it is likely that the jury was confused about the meaning and impact of the evidence.

{¶ 37} Generally, a prosecutor's conduct at trial is not grounds for reversal unless that conduct deprives the defendant of a fair trial. *State v. Loza* (1994), 71 Ohio St.3d 61, 78. "The test for prosecutorial misconduct is whether the prosecutor's comments were improper and, if so, whether those remarks prejudicially affected the defendant's substantial rights." *State v. Eley* (1996), 77 Ohio St.3d 174, 187; *State v. Lott* (1990), 51 Ohio St.3d 160.

{¶ 38} Based on the foregoing, we find that the prosecutor's objection to the testimony regarding the hair samples found on the glove did not deprive appellant of a fair trial and, accordingly, appellant's fifth assignment of error is not well-taken.

{¶ 39} As his sixth assignment of error, appellant asserts that his conviction was against the manifest weight of the evidence. However, in support of this assigned error, appellant argues that the evidence presented at trial was insufficient to support a conviction of aggravated murder. Accordingly we will consider this argument to be one of sufficiency of the evidence.

{¶ 40} The Supreme Court of Ohio has defined the proper standard of appellate review in examining a criminal conviction based upon an alleged failure to meet the "sufficiency of the evidence" standard. A reviewing court must determine whether the evidence submitted was legally sufficient to support the elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 1997-Ohio-52. The reviewing court must determine whether a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt when viewing the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph 2 of the syllabus. As this court has consistently affirmed, the trier of fact is vested with the discretion to weigh and evaluate the credibility of conflicting evidence in reaching its determination. It is not within the proper scope of the appellate court's responsibility to judge witness credibility. *State v. Hill*, 6th Dist. No. OT-04-035, 2005-Ohio-5028 at ¶ 42 .

{¶ 41} Appellant was charged with aggravated murder in violation of R.C. 2903.01(A), which provides:

{¶ 42} "No person shall purposely, and with prior calculation and design, cause the death of another * * *."

{¶ 43} Pursuant to R.C. 2901.22(A), "A person acts purposely when it is his specific intention to cause a certain result * * *."

{¶ 44} Although the Ohio Revised Code does not define "prior calculation and design," the Supreme Court of Ohio has interpreted the phrase to require evidence of "more than the few moments of deliberation permitted in common law interpretations of the former murder statute, and to require a scheme designed to implement the calculated decision to kill." *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, ¶ 38, citing *State v. Cotton* (1978), 56 Ohio St.2d 8, 11. While "'neither the degree of care nor the length of time the offender takes to ponder the crime beforehand are critical factors in themselves,'" momentary deliberation is insufficient. *State v. D'Ambrosio* (1993), 67 Ohio St.3d 185, 196, 1993-Ohio-170, quoting the 1973 Legislative Service Commission Comment to R.C. 2903.01.

{¶ 45} Nevertheless, where the evidence presented at trial "reveals the presence of sufficient time and opportunity for the planning of an act of homicide to constitute prior calculation, and the circumstances surrounding the homicide show a scheme designed to implement the calculated decision to kill, a finding by the trier of fact of prior calculation

and design is justified." *State v. Cotton* (1978), 56 Ohio St.2d 8, paragraph three of the syllabus.

{¶ 46} Based on the foregoing, it was the state's burden to prove that appellant purposely caused LuAnn Downard's death and acted with prior calculation and design. Upon our review of the trial court's record in this case, we find that a rational trier of fact could have found the elements of aggravated murder proven beyond a reasonable doubt when viewing the evidence in a light most favorable to the prosecution.

{¶ 47} Evidence in this case included the six-inch kitchen knife used to kill LuAnn Downard; packaging for a six-inch kitchen knife of the same size and type found in appellant's bedroom and containing appellant's fingerprint; a highly accurate drawing of the knife blade made by appellant before the knife was removed from LuAnn's body; latex gloves with LuAnn's blood and appellant's DNA recovered from appellant's bedroom, and blood-soaked towels recovered from appellant's bedroom. The jury viewed photographs of a scratch on appellant's face and heard testimony that appellant's DNA was found under LuAnn's fingernails. Further, the jury heard testimony that appellant had said he would kill LuAnn if she divorced him and took his children away, as well as testimony from several individuals that LuAnn had been having a sexual relationship with appellant's son. A detective testified there were no signs of forced entry outside the house and no footprints in the snow outside any of the windows or doors. The jury also heard the testimony of the forensic scientist who examined several pieces of evidence. The witness testified that one of the gloves found in appellant's bedroom contained DNA

consistent with appellant on the inside and DNA consistent with LuAnn on the outside. A second glove contained a mixture of both appellant's and LuAnn's DNA inside and LuAnn's DNA on the outside. She also testified that a swab from LuAnn's left-hand fingernails contained appellant's DNA.

{¶ 48} Additionally, the jury heard testimony as to appellant's confession from the two detectives who interviewed him the day of the murder. According to the detectives, appellant knew the size and type of the knife blade well enough to draw an accurate sketch of it and also knew before the body had been examined that she had been stabbed only once. During the interview, appellant described thinking about whether to kill LuAnn as he stood beside her bed holding the knife in his hand. Appellant specifically described walking into LuAnn's bedroom, standing by her bed, leaving and smoking a cigarette in the kitchen, walking back in and standing there again, leaving a second time to smoke another cigarette, returning to the bedroom a third time and then stabbing her in the chest.

{¶ 49} All of the foregoing supports the jury's finding that appellant caused the death of LuAnn Downard and in so doing acted purposely and with prior calculation and design.

{¶ 50} Finally, the jury heard appellant testify that he did not kill LuAnn Downard. Clearly, the jury did not find his testimony credible.

{¶ 51} Upon consideration of the evidence and the law, we find that the evidence presented to the jury, when viewed in a light most favorable to the prosecution, was

legally sufficient to prove the elements of the offense of aggravated murder as set forth in R.C. 2903.01(A). Accordingly, appellant's sixth assignment of error is not well-taken.

{¶ 52} We now turn to appellant's second assignment of error in which he asserts he was denied effective assistance of counsel in several regards.

{¶ 53} To prevail on a claim of ineffective assistance of counsel, appellant must show counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. This standard requires appellant to satisfy a two-part test. First, appellant must show counsel's representation fell below an objective standard of reasonableness. Second, appellant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different when considering the totality of the evidence that was before the court. *Strickland v. Washington* (1984), 466 U.S. 668. This test is applied in the context of Ohio law that states that a properly licensed attorney is presumed competent. *State v. Hamblin* (1988), 37 Ohio St.3d 153.

{¶ 54} In support of this claim, appellant asserts trial counsel demonstrated a total lack of commitment to his defense by making disparaging comments about him during his opening statement and closing argument. During his opening statement, counsel referred to appellant as a "forlorn character" but then immediately said, "I want to strike that. But he is a forlorn person." During closing argument, counsel told the jury that if they viewed appellant's "clumsy performance" on the witness stand as indicative of his guilt they would be wrong. In making that remark, counsel appeared to be attempting to

minimize appellant's unemotional demeanor when he was questioned about his wife's murder.

{¶ 55} Appellant also claims counsel contradicted his testimony when he indicated appellant knew his wife was "sleeping around" with several other men. This comment, however, did not directly contradict appellant's testimony, as appellant made several statements indicating he was aware of at least one of the relationships his wife had with other men.

{¶ 56} Appellant's remaining claims are not supported by any argument or authority. As he did under his third assignment of error, appellant merely lists pages of transcript after each assertion. Appellant claims counsel should have objected to numerous "leading and/or hearsay questions" throughout the trial. These claims were addressed under appellant's third assignment of error. Appellant also argues that counsel should have moved for a mistrial when the prosecutor "attempted to prohibit the introduction of newly identified exculpatory evidence." The merits of this argument were addressed under appellant's fifth assignment of error. Appellant further argues that counsel was ineffective because he either failed to cross-examine, or examined very briefly, several of the scientific experts presented by the prosecution. The record reveals, however, that counsel cross-examined every witness presented by the prosecution with the exception of the individual who was called simply to authenticate LuAnn Downard's death certificate. As to the length of counsel's various cross-examinations, such a matter is within the realm of trial strategy and not for this court to second-guess. See *Strickland,*

supra. Finally, appellant argues that trial counsel "succumbed to the pressure of the trial court that the trial needed to be completed before the end of the week." This argument is without merit.

{¶ 57} Upon review of the foregoing, we cannot say that appellant's trial counsel was ineffective and, accordingly, his second assignment of error is not well-taken.

{¶ 58} On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Wood County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, P.J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE