[Cite as *State v. Valsadi*, 2010-Ohio-5030.]

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

State of Ohio — Court of Appeals No. WD-09-064

Appellee — Trial Court No. 2009CR0095

v.

Tinkesh Valsadi — **DECISION AND JUDGMENT**

Appellant — Decided: October 15, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Heather M. Baker, Assistant Prosecuting Attorney, for appellee.

William F. Hayes, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Tinkesh Valsadi, appeals from his conviction in the Wood County Court of Common Pleas for rape. For the reasons that follow, we affirm.

Appellant was indicted for rape on February 19, 2009. A jury trial commenced on June 10, 2009. The victim testified that in 2007, she was employed as a manager at a

Perrysburg, Ohio hotel. While there, she met appellant. Appellant, who resided at the hotel, was also employed by the hotel to assist in hotel renovations. In July 2007, the victim asked her boss for his permission to use the hotel laundry facilities for her own laundry. Her boss agreed and the victim and her sister brought the victim's laundry to the hotel. Around the same time, appellant also used the laundry facilities. The victim and her sister told appellant that they would take care of his laundry as well so appellant left.

{¶ 2} Later, the victim testified that appellant, appearing intoxicated, came back to the laundry room. The three people talked for awhile before the victim and her sister decided to leave to get some food. When they returned, appellant was still sitting in the laundry room. The victim's sister decided to leave. The victim testified that she told appellant she would finish his laundry. Appellant again left. When he returned, the victim had already folded his laundry. The victim testified that he asked her to help him carry the clothes back to his room and she agreed.

{¶ 3} When they arrived at his room, the victim testified that appellant pulled her inside as she was handing him his clothes. As she protested, he pushed her up against the wall and began kissing her. She pushed him away and in the process, she fell over a suitcase and onto the bed. She testified that appellant then got on top of her and restrained her arms. She testified that she was crying and screaming and asking appellant to let her go as he raped her. When he was finished, he rolled over and had a cigarette. The victim testified that she grabbed her clothes intending to leave when appellant pulled her back onto the bed and again forcibly raped her as she was asking him to stop. When

he was finished, the victim testified that he either passed out or fell asleep. She then left the room, retrieved her laundry, briefly spoke to the front desk clerk and left.

{¶ 4} The victim testified that she did not tell anyone in 2007 what had happened to her at the hotel because she was afraid she would lose her job. Shortly after the incident, the victim testified that appellant sent her threatening text messages instructing her to keep her mouth shut. In July 2008, the victim went to the police to report on another unrelated matter. In the course of her discussion with the police, she told them that appellant had raped her in 2007.

{¶ 5} Bridget Lee testified that she was working as a desk clerk at the hotel on the night the victim claimed she was raped. She testified that she spoke to the victim as she was leaving the motel and that she seemed very upset. She asked the victim what was wrong and the victim responded "[I] don't want to talk about it."

{¶ 6} Eon Ducat testified that in March 2009, he was in the Wood County Jail serving time for failing to pay child support. While there, he met appellant. Ducat testified that he asked appellant why he was in jail. Appellant told him that he had been accused of rape. Ducat testified that appellant told him that he raped a woman he worked with at a hotel. Appellant told him that the woman was screaming and begging him to stop but "it just felt good." Ducat testified that appellant was upset about being in jail and that he stated: "[I] wish I would have just killed her." Ducat testified that the woman had the same first name as the victim in this case.

{¶ 7} Ducat testified that he did not receive any compensation for his testimony or any reduction in sentence for his testimony. He testified that he came forward out of concern for his own family and other future victims.

{¶ 8} Detective Nicholas Cook of the Perrysburg Police Department testified that he met the victim on July 16, 2008, when she came to the station to report on an unrelated matter. As she was explaining her reason for being at the police department, Cook testified that she became emotional and started to tell him that she had been raped a year earlier at a Perrysburg hotel. The description of the rape the victim gave to Detective Cook mirrored the victim's own trial court testimony. Cook testified that he asked her why she had waited so long to report it and she told him that it was because she was in fear of losing her job. In addition, the victim told Cook that appellant had been involved in another incident with another employee. Specifically, appellant had attempted to kiss an employee named Tiffany. When Tiffany complained to her boss, appellant was fired.

{¶ 9} Detective Cook then contacted appellant and asked him about the victim's allegation. According to Detective Cook, appellant told him that it was not true and that the victim had just made up the story to prevent appellant from becoming the hotel manager. Appellant also denied attempting to kiss the other hotel employee and he denied that he was fired.

{¶ 10} Nayan Patel testified that in 2007 he owned a Perrysburg, Ohio hotel that employed the victim and appellant. Patel testified that he fired appellant for attempting to kiss another employee.

{¶ 11} Appellant himself took the stand in his own defense. He denied that he raped the victim. He testified that on the night in question he asked the victim if she had permission to do her own laundry at the hotel. She told him that she did. Appellant testified that he then called Patel to ask if she in fact did have permission to use the laundry facilities and Patel confirmed that she did. Appellant testified that the victim did not help him do his laundry and that she did not follow him back to his room when he was finished with his laundry.

{¶ 12} On June 12, 2009, the jury found appellant guilty of first degree rape. He was sentenced to serve six years in prison. Appellant now appeals setting forth the following assignments of error:

{¶ 13} "I. The trial court erred in denying Valsadi the right to confront and cross-examine witnesses, a fair trial, and due process of law, in violation of his Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 10 and 16 of the Ohio Constitution, when it improperly limited cross-examination to preclude evidence of false accusations by the alleged victim.

{¶ 14} "II. The trial court violated both R.C. 2907.02(D) and Evid. R. 403 in permitting the state of Ohio to introduce evidence tending to show that the defendant committed another similar, but separate offense and in doing so denied him his right to the due process of law under the Sixth Amendment of the United States Constitution.

{¶ 15} "III. The trial court violated Valsadi's right to due process under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1,

Section 10 of the Ohio Constitution when it upheld the jury verdict as it was not supported by the sufficiency of the evidence and was against the manifest weight of the evidence.

{¶ 16} "IV. Valsadi was denied his constitutional right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 10 and 16 of the Ohio Constitution.

{¶ 17} "V. The defendant appellant's right to a fair trial under his Fifth, Sixth, and 14th Amendments to the U.S. Constitution was denied because of cumulative errors committed during the trial of this case by the court and counsel."

{¶ 18} In his first assignment of error, appellant contends that the court erred in not allowing him to present evidence of the victim's prior false allegation of sexual assault by a hotel patron.

{¶ 19} On May 8, 2009, the state filed a motion in limine to prevent appellant from presenting evidence of a previous sexual assault claim made by the victim. The state argued that such evidence was inadmissible under R.C. 2907.02(D), Ohio's rape shield law. An evidentiary hearing commenced on May 27, 2009.

{¶ 20} William Loftus testified that he is a locomotive engineer for CSX Transportation, Inc. ("CSX"). He travels often for his job and frequently stays at the Perrysburg hotel where the victim and appellant worked. Loftus testified that in 2008, he was accused of sexually harassing the victim. A week after the incident allegedly occurred, Loftus was informed of the allegation by his manager. He was immediately

removed from service without pay pending a formal disciplinary investigation. A CSX investigative hearing was held on August 28, 2008. A transcript of the hearing was admitted into evidence. A summary of that transcript follows.

{¶ 21} James Berry, a CSX manager, testified that he investigated the allegation against Loftus for CSX. He interviewed the victim who told him that on the night in question, she talked with Loftus for several hours in the hotel break room. At approximately 5 a.m., the victim began preparing breakfast for the customers. While she was cooking, Loftus kissed her once. When he tried again, she fought him off. The victim told Berry that Loftus again tried to kiss her but he was surprised by another customer who walked in and he then left. Berry testified that Loftus told him that he helped the victim get breakfast started but that he never attempted to kiss her.

{¶ 22} According to Berry, the victim was upset after the alleged incident. Another engineer, Eileen Devine, noticed the victim was upset and asked her what was wrong. The victim told her what had happened with Loftus and Devine reported it to company officials. Devine did not testify at the hearing.

{¶ 23} Loftus's union representative read three statements from CSX employees into the record. Mike Emswiler wrote that he has stayed at the hotel when working. He stated that he found the victim's allegation against Loftus unbelievable. He also stated that on numerous occasions the victim talked openly about sex while working and that she had invited other CSX employees to stay in her room when they were checking in. Kevin Smith wrote that the victim made numerous sexual and unprofessional remarks to

him when he has checked into the hotel. William T. Davis wrote that he has worked with many engineers in his 34 years of service and that Loftus was one of the best he has encountered. He noted that he has stayed at hotels with Loftus for work, including the hotel at issue, and that he has never seen Loftus behave inconsistent with "CSX practices or civilized behavior of a gentleman."

{¶ 24} The victim testified that June 5, 2008, she was working the third shift at the hotel. She and Loftus began talking about various things. At approximately 5:00 a.m., Loftus asked her if she would open up the breakfast room early. She agreed and she went into the room. Loftus also came into the room and kissed her on the cheek. The victim testified that she took this to be a friendly gesture. As she turned to walk away from him, his demeanor changed. He then raised his voice and asked her "did you really think I called you in here for f***ing eggs?" The victim testified that he again tried to kiss her and she told him to stop. Loftus walked out of the breakfast room only to return again and ask "I can't believe you'd think I'd be down here all night just to visit." He grabbed the victim's arm and again attempted to kiss her. The victim testified that she turned her head and pushed Loftus away with her elbow. At that point, the victim saw another customer come in and Loftus moved away from her.

{¶ 25} The victim testified that she originally had no intentions of reporting the incident to CSX officials and that is why it was not reported until five days later. She considered the CSX employees who stayed at her hotel her friends. However, the week following the incident, the victim testified she began suffering from anxiety and panic

attacks as a result of the incident. She was worried Loftus would attempt to kiss her again. She then confided in Eileen Devine and "it went from there." The victim testified that "[I] just wanted to let it go. * * * When I talked to Ms. Devine she instructed me otherwise and knowing the business and being an elder to me, I listened to what she said and suggested." When asked if she was coerced by Ms. Devine to bring the charges, the victim answered "no." The victim testified that Ms. Devine merely explained the company's sexual harassment policy to her.

{¶ 26} A letter, written by Jim Page, a truck driver, was read into the record. Page wrote that on June 5, 2008, he was staying at the hotel when he came across the victim standing with a man. The victim immediately said hello to Page and asked him to stay with her a minute. The other man walked away and the victim told Page that the man had just tried to kiss her against her will. She thanked Page for arriving when he did to break up the situation. Page wrote that the victim was upset and that she kept expressing her disbelief that the man tried to kiss her.

{¶ 27} Loftus testified that on June 5, 2008, he made small talk with the victim, a woman with whom he had always had a cordial relationship. He mentioned that he was tired of the long hours he was working and that he was tired of being away from home so much. He told her that he had been married for 25 years. According to Loftus, the victim then suggested that he purchase a sex toy for his wife or for himself. Loftus told her he was not interested in sex toys and then asked her if he could go into the break room to get some boiled eggs. She said he could. Loftus testified that that was the only

time he was in the break room with the victim. He got the eggs and went back to his room. He testified that he never had physical contact with the victim.

{¶ 28} At the trial court's evidentiary hearing, Loftus testified that on September 24, 2008, he received a letter from CSX notifying him that he had been exonerated of all charges of sexual harassment.

{¶ 29} Upon conclusion of the evidentiary hearing, on June 3, 2009, the trial court denied appellant's motion to admit evidence of a prior false accusation of a sexual offense by the victim.

{¶ 30} R.C. 2907.02(D), Ohio's rape shield law, provides in pertinent part:

{¶ 31} "Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."

{¶ 32} This court has held that the definition of sexual contact with the mouth could be considered an erogenous zone if the purpose was for sexual gratification, thus, the victim's allegations against Loftus can be viewed in the context of the rape shield law. *State v. Wise* (Jan. 29, 1993), 6th Dist. No. 91WD113.

{¶ 33} "The rights to confront witnesses and to defend are not absolute and may bow to accommodate other legitimate interests in the criminal process. *Chambers v. Mississippi* (1973), 410 U.S. 284, 295, 93 S.Ct. 1038, 1046, 35 L.Ed.2d 297, 309. As the Supreme Court of Wisconsin noted, '[t]he exclusion of evidence of minimal, if any, probative effect in view of its highly inflammatory nature does not depart from general principles of the law of evidence or of constitutional law.' *State v. DeSantis* (1990), 155 Wis.2d 774, 793-794." *State v. Boggs* (1992), 63 Ohio St.3d 418, 422.

{¶ 34} "R.C. 2907.02 prohibits only evidence of 'sexual activity' of the victim. Because prior false accusations of rape do not constitute 'sexual activity' of the victim, the rape shield law does not exclude such evidence." *Boggs*, supra at 422-423.

{¶ 35} "When the defense seeks to cross-examine on prior false accusations of rape the burden is upon the defense to demonstrate that the accusations were totally false and unfounded. Hence the initial inquiry must be whether the accusations were actually made by the prosecutrix. Moreover, the trial court must also be satisfied that the prior allegations of sexual misconduct were actually false or fabricated. That is, the trial court must ascertain whether any sexual activity took place, i.e., an actual rape or consensual sex. If it is established that either type of activity took place, the rape shield statute prohibits any further inquiry into this area. Only if it is determined that the prior accusations were false because no sexual activity took place would the rape shield law not bar further cross-examination." Id. See, also, *State v. King*, 4th Dist. No. 2008 CA 00045, 2009-Ohio-5984.

{¶ 36} The trial judge's decision reads in pertinent part:

{¶ 37} "The defendant's arguments in this regard are based upon the fact that CSX railroad conducted a hearing in Columbus, Ohio, as to the alleged sexual harassment by their employee, Mr. Loftus. * * * The hearing resulted in an exoneration of Mr. Loftus; however, the decision appears to be based on the alleged promiscuity of [the victim], and some conspiracy theory that another female CSX employee put [the victim] up to making these accusations. There was a great deal of discussion as to the impact of a finding against Mr. Loftus as to his employment status and his marital situation. Although the court commends CSX for taking these matters seriously enough to hold a hearing, it appears they were more concerned about the impact upon the alleged offender, Mr. Loftus. The allegations did only involve kissing, which may have played a part in the decision of the hearing officer although this is pure speculation. * * * During the hearing in Columbus, [the victim] reaffirmed her prior written statements and her testimony was consistent with those statements. Her testimony in court for this hearing likewise is consistent with both the written statements and her testimony at the CSX hearing. The court finds those allegations to be credible, in spite of the finding of the hearing officer."

{¶ 38} In this case, the court found that appellant had not met his burden of proving that the victim's allegations against Loftus were false. From the trial court's standpoint, appellant merely proved that the victim made allegations against Loftus that a CSX hearing officer did not find to be credible. This does not preclude the trial court from reaching a different conclusion. We have reviewed the transcript of the evidentiary

hearing as well as the evidence submitted in support of appellant's claims. We agree with the trial court that the victim's version of the events of June 5, 2008, remained consistent throughout the investigation and during the hearing. As such, we find no error in the trial court's finding that the victim's allegations against Loftus "had credibility and were not unfounded." Accordingly, the court did not err in excluding the evidence under the rape shield law. Appellant's first assignment of error is found not well-taken.

{¶ 39} In his second assignment of error, appellant contends that the court erred in allowing the state to introduce the testimony of Tiffany Dutkiweicz. She testified that in the summer of 2007, she worked at the hotel with the victim and appellant. One evening, appellant called the front desk and asked her to pick up his laundry. When she entered his room, Dutkiweicz testified that appellant locked the door and asked her to sleep with him. Dutkiweicz testified that she told him "no" but he kept asking her. Finally, he allowed her to leave. Later, appellant approached her in a hallway and again asked her to sleep with him. She told him no and went into the laundry room. He called her back into the hallway and when Dutkiweicz returned, she testified that appellant kissed her against her will. Dutkiweicz testified that she immediately called her boss, Nayan Patel, and reported the incident. She informed Patel that she would no longer work at the hotel if appellant was there. Consequently, Patel fired appellant.

{¶ 40} A trial court possesses broad discretion with respect to the admission of evidence, and an appellate court will not overturn the decision of a trial court regarding the admission or exclusion of evidence absent a clear abuse that has materially prejudiced

the defendant. See *State v. Hymore* (1967), 9 Ohio St.2d 122, 128. An abuse of discretion is more than an error of law or judgment, but instead implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. Id.

{¶ 41} Generally, evidence of other criminal or bad acts, wholly independent of the criminal offense for which the accused is being tried, is inadmissible. *State v. Thompson* (1981), 66 Ohio St.2d 496, 497. However, Evid.R. 404(B) provides that while:

{¶ 42} "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith[,] [i]t may * * * be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." (Emphasis added.)

{¶ 43} R.C. 2945.59 similarly provides:

{¶ 44} "In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior

or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant."

{¶ 45} The second paragraph of R.C. 2907.02(D) provides:

{¶ 46} "Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."

{¶ 47} Because R.C. 2945.59 and Evid.R. 404(B) codify an exception to the common law with respect to evidence of other acts of wrongdoing, the standard for determining admissibility of such evidence is strict, and the statute section and rule must be construed against admissibility. *State v. Broom* (1988), 40 Ohio St.3d 277, at paragraph one of the syllabus.

{¶ 48} Therefore, in order for "other acts" evidence to be admissible, it must come within one of the theories of admissibility enumerated in Evid.R. 404(B) or R.C. 2945.59. *State v. Broom*, supra. In addition, proof of one of these purposes must go to an issue which is material in proving the defendant's guilt for the crime at issue. *State v. DePina* (1984), 21 Ohio App.3d 91, 92, citing *State v. Burson* (1974), 38 Ohio St.2d 157.

Further, the prior act must not be too remote and must be closely related in nature, time, and place to the offense charged. *State v. Schaim* (1992), 65 Ohio St.3d 51. A prior act which is "* * * too distant in time or too removed in method or type has no permissible probative value." *State v. Snowden* (1976), 49 Ohio App.2d 7, 10; *State v. Burson*, supra.

{¶ 49} The state maintains that Dutkiweicz's testimony was admissible to show that appellant used the same modus operandi, or "pattern of conduct," in his crimes. We agree. Both women worked at the same hotel around the same time period, both women claim they were approached while tending to laundry duties, both women claim they repeatedly rejected appellant's advances and both women claim that appellant kissed them without their permission. Accordingly, we do not find that the trial court abused its discretion in admitting the testimony of Dutkiweicz. Appellant's second assignment of error is found not well-taken.

{¶ 50} In his third assignment of error, appellant contends that the verdict was not supported by the sufficiency of the evidence and was against the manifest weight of the evidence.

{¶ 51} Sufficiency of the evidence and manifest weight of the evidence are quantitatively and qualitatively different legal concepts. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Sufficiency of the evidence is purely a question of law. Id. Under this standard of adequacy, a court must consider whether the evidence was sufficient to support the conviction, as a matter of law. Id. The proper analysis 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.'" *State v. Williams* (1996), 74 Ohio St.3d 569, 576, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 52} In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins* at 387. In making this determination, the court of appeals sits as a "thirteenth juror" and, after "'reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.'" Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 53} The elements of R.C. 2907.02(A)(2), rape, are as follows: "[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force."

{¶ 54} The jury in this case heard testimony from the victim that appellant restrained her and forced her to have sex. We find the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of rape. Furthermore, it is clear that the jury in this case chose to believe the testimony of the victim over the testimony of appellant. This is a matter of credibility within the province of the jury. On

review, we cannot say that the jury clearly lost its way or perpetrated a manifest miscarriage of justice. Appellant's third assignment of error is found not well-taken.

{¶ 55} In his fourth assignment of error, appellant contends that he was denied effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied upon as having produced a just result. This standard requires appellant to satisfy a two-prong test. First, appellant must show that counsel's representation fell below an objective standard of reasonableness. Second, appellant must show a reasonable probability that, but for counsel's perceived errors, the results of the proceeding would have been different. *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.

{¶ 56} Appellant contends that his counsel was ineffective for failing to object to a "litany of hearsay statements made by almost all of the state's witnesses." However, appellant has failed to specify which statements were prejudicial.

{¶ 57} Appellant also contends that his counsel was ineffective in failing to object to the introduction of a letter into evidence. The letter was written by the victim's doctor describing the victim's medical condition and her treatment. We do not find that counsel was ineffective in failing to object to this evidence given the fact the doctor himself took the stand and testified regarding the exact information.

{¶ 58} Finally, appellant contends his counsel was ineffective in failing to seek an in camera inspection of the victim's statement for purposes of aiding in cross examination pursuant to Crim.R. 16(C)(1)(d). Appellant's argument is without merit as Crim.R. 16(C)(1)(d), as that rule existed at the time of appellant's trial, applies to the prosecution rather than the defense. The rule states:

{¶ 59} "In camera inspection of witness' statement. Upon completion of the direct examination, at trial, of a witness other than the defendant, the court *on motion of the prosecuting attorney* shall conduct an in camera inspection of the witness' written or recorded statement obtained by the defense attorney or his agents with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement." (Emphasis added.)

{¶ 60} Appellant's fourth assignment of error is not well-taken.

{¶ 61} In appellant's fifth and final assignment of error, appellant maintains that if the errors he previously raised are deemed individually harmless, collectively they constitute prejudicial error. Since we have not found any of appellant's prior assertions of error meritorious, appellant's fifth assignment of error is also found not well-taken.

{¶ 62} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay court costs of this appeal, pursuant to App.R. 24.

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.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE