

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080362
	:	TRIAL NO. B-0704610
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LEVELL RICKS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant Levell Ricks was found guilty of two counts of murder,² two counts of felonious assault,³ accompanying gun specifications, and having a weapon under a disability.⁴ At sentencing, the trial court merged the murder counts, the felonious-assault counts, and the gun specifications, and imposed an aggregate prison term of 23 years to life. Ricks now appeals his convictions, arguing that his trial counsel was ineffective and challenging the sufficiency and weight of the evidence underlying his convictions. Finding no error, we affirm.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2903.02(A) and (B).

³ R.C. 2903.11(A)(1) and (2).

⁴ R.C. 2923.11(A)(1).

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After learning that there was a warrant for his arrest, Ricks surrendered to the police and confessed to shooting Richard Oldham on May 13, 2007, in the Evanston neighborhood of Cincinnati, Ohio. (Oldham died two days later.) In his confession, Ricks told police officers that he had been walking down the street when Oldham, who was sitting in his sports utility vehicle (“SUV”), indicated that he wanted to buy drugs. Ricks entered the front passenger seat of Oldham’s SUV and showed Oldham one ounce of powder cocaine. Ricks said that Oldham pocketed the cocaine and refused to pay for it. Ricks said he then crossed his left hand over his body to open the passenger side door, grabbed his gun with his right hand from his waistband, and shot Oldham three times. Ricks said that, as he was shooting, Oldham “jumped” to the back seat of the SUV. (Ricks speculated that Oldham might have been trying to grab a gun.) Ricks exited from the SUV and opened the rear passenger door because he had a change of heart and wanted to help Oldham. But according to Ricks, others began shooting at him, so he ran away.

Ricks ran to his car and his cousin, Calvin Clark, drove him to the Price Hill neighborhood of Cincinnati. Ricks said that he left his gun, a .38 special, in the car and instructed Clark to get rid of the car.

At trial, Ricks’s taped confession was played for the jury. But then Ricks testified that he had not shot Oldham and had never sold him drugs before. Ricks explained that he had lied to the police because he believed the officers were convinced he had shot Oldham anyway and were not going to stop questioning him until he admitted it. Ricks did testify that he had been given and understood his *Miranda* warnings prior to talking to police officers.

At trial, Clark testified for the defense. He testified that he did not see Ricks shoot Oldham, but that he had heard gunshots and had then seen Ricks running. While Ricks was running, Clark testified, he had heard other gunshots. Clark also testified that he did

not see a gun on Ricks that day. On cross-examination, the state challenged Clark's credibility by noting his criminal history, including convictions for falsification. Clark admitted that he had lied to police in the past, but not in this instance.

The state presented two eyewitnesses. David Stanton, Oldham's uncle, testified that he had been visiting family for Mother's Day, when he observed Ricks enter Oldham's SUV. Stanton said he was sitting on a friend's porch, which was over 30 feet away from Oldham's parked car. Stanton heard gun shots and observed a struggle between Ricks and Oldham. Stanton saw Ricks shoot Oldham twice and then run away. Stanton chased Ricks, grabbed his shirt, but then fell. Stanton returned to Oldham, who had managed to get out of the SUV and lay bleeding on the sidewalk. Stanton identified Ricks in court as the shooter and said that he knew Ricks from the neighborhood.

Erica Hunter also knew Ricks from the neighborhood and identified him as the one who had shot Oldham. She testified that she had been in the street talking to friends earlier that day when she saw Ricks crying and talking to someone in front of a store called "Jason's." Ricks then left the area in his SUV. She observed him return a short time later, and he walked over and entered Oldham's SUV. She testified that she had heard three or four gunshots and then observed Ricks get out of Oldham's SUV and fire a gun into the SUV. She said that Oldham had tried to get out of the car, but fell on the sidewalk. Finally, she testified that Stanton had chased Ricks, grabbed his shirt, but ended up falling on the sidewalk.

Officer David Landesberg testified that there was a small amount of Oldham's blood on the console between the two front seats of his SUV and large amounts of his blood were found on the back-seat passenger door, as well as on the back of the front

passenger seat. Criminalist William Hillard testified that Ricks's palm print was found on the outside of Oldham's SUV to the left of the rear passenger door.

Dr. Obinna Ugwu, a forensic pathologist from the Hamilton County Coroner's Office ("HCCO"), who had performed Oldham's autopsy, testified that Oldham had been shot four times: in the left lower jaw; in the left flank; in the inner right thigh, and in the lower left thigh. Dr. Ugwu could not tell the sequence of the gunshot wounds, but testified that it appeared the shooter must have been "generally to the left of the victim." Dr. Ugwu testified that Oldham had died due to the swelling of his brain, which was caused by a lack of oxygen from blood loss caused by the gunshot wounds. Robert Lenhoof, a HCCO firearms examiner, testified that the four bullets fired into Oldham's body had all been fired from the same .38 special revolver.

In his first assignment of error, Ricks argues that his trial counsel was ineffective by (1) failing to file a motion to suppress Ricks's confession to the police; (2) failing to question whether either of the state's eyewitnesses had given grand-jury testimony; (3) failing to properly cross-examine Dr. Ugwu; and (4) permitting Ricks to testify.

To prevail on an ineffective-assistance claim, Ricks "must show that [his] trial counsel's representation fell below an objective standard of reasonableness"⁵ and that he was prejudiced by counsel's deficient performance.⁶ Prejudice is demonstrated by showing that, but for the deficiencies in performance, the result of the proceeding would have been different.⁷ Ricks must also overcome the presumption that defense counsel's performance constituted sound trial strategy.⁸

⁵ See *Strickland v. Washington* (1984), 466 U.S. 668, 688, 104 S.Ct. 2052.

⁶ *Id.* at 687.

⁷ *Id.* at 694.

⁸ *State v. Bond* (Oct. 29, 1999), 1st Dist. No. C-990195.

Ricks maintains that trial counsel should have moved to suppress his confession. But Ricks has not demonstrated how the trial court would have granted such a motion. Ricks voluntarily turned himself in, and signed a waiver-of-rights form, and there is no evidence in the record, despite Ricks's testimony about his confession, to support a finding that the police had overcome Ricks's will.⁹ Given that there was no basis for the trial court to have suppressed the confession, we cannot say that trial counsel's failure to file a motion to suppress was deficient.

Next, we hold that trial counsel's failure to question whether the eyewitnesses had given grand-jury testimony was not ineffective assistance. Regardless of whether trial counsel should have asked for grand-jury testimony, Ricks has not demonstrated that the outcome of his trial would have been any different even if he had had access to the grand-jury testimony.

We also hold that trial counsel's cross-examination of Dr. Ugwu was proper and did not constitute ineffective assistance. Ricks argues that his trial counsel should have pointed out on cross-examination that Ricks could not have caused Oldham's gunshot wounds in light of Dr. Ugwu's testimony that the shooter must have been "generally to the left of the victim." (Ricks had been sitting to the right of Oldham.) Regardless of whether trial counsel should have pointed that fact out during the cross-examination, the record reflects that trial counsel made this argument during his closing. Under these circumstances, Ricks cannot demonstrate any prejudice.

⁹ See, generally, *State v. Tapke*, 1st Dist. No. C-060494, 2007-Ohio-5124, ¶¶44-49.

Finally, Ricks argues that his trial counsel was ineffective by permitting him to testify at trial. But Ricks has not overcome the presumption that this was sound trial strategy given that Ricks was maintaining his innocence despite his confession.

Because the record does not support Ricks's claim of ineffective assistance of counsel, we overrule his first assignment of error.

In his second assignment of error, Ricks contests the sufficiency and weight of the evidence underlying his convictions. First, Ricks maintains that the state failed to prove that Ricks was the perpetrator of the underlying offenses. Ricks argues that the eyewitness testimony differed. Despite minor variances in the testimony, such as Stanton testifying that when Ricks was fleeing he had his gun tucked in his waistband, while Hunter testified that the gun was in his hand, we note that both witnesses, who knew Ricks, saw him fire his gun at least two times at Oldham. After viewing the evidence in a light most favorable to the state, as we are required to do on a sufficiency claim, we hold that the eyewitnesses' testimony, in addition to Ricks's confession, was sufficient to prove that Ricks was the perpetrator of the underlying offenses.¹⁰ Further, we hold that the jury did not lose its way and create a manifest miscarriage of justice by finding Ricks guilty.¹¹ Although Ricks argues that he could not have caused Oldham's gunshot wounds because he was to the right of Oldham, the state presented evidence that Oldham, in an attempt to escape, had climbed to the back seat of his SUV over the console between the two front seats, exposing his left side. The fact that Oldham ended up in the back seat of his SUV was supported by Ricks's confession, and by the large amounts of blood found in the rear

¹⁰ See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

¹¹ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

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passenger area in contrast to the very small amount of blood found on the console between the two front seats.

Accordingly, we overrule the second assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 8, 2009

per order of the Court _____.
Presiding Judge