

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107060
	:	
v.	:	
	:	
DAZELLE NEWMAN,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: April 11, 2019**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-16-611461-A

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*Appearances:*

Brian R. McGraw and David L. Doughten, *for appellant.*

Michael C. O'Malley, Prosecuting Attorney, and Anthony Thomas Miranda, Owen M. Patton, and Hannah Smith, Assistant Prosecuting Attorneys, *for appellee.*

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Dazelle Newman (“Newman”) appeals his convictions for attempted murder, aggravated robbery, robbery, and felonious assault, arguing that he received ineffective assistance of counsel. For the reasons that follow, we affirm.

### **Procedural and Substantive History**

**{¶ 2}** This case stems from an apparent robbery setup that took place on May 9, 2016. That evening, Denzel Harris (“Harris”), Samantha Harrison (“Harrison”), and Victoria Bascon (“Bascon”) were planning to go to a party together. Harrison and Bascon had been friends since childhood. Both women knew Newman, and Bascon had dated Newman on and off for approximately four years before this incident.

**{¶ 3}** On May 9, 2016, Harrison and Bascon, who were both underage at the time, wanted to get a bottle of liquor before the party. They planned to meet up with Newman, Bascon’s ex-boyfriend. Harris, who did not know Newman, was driving the women. Harrison was in the passenger seat, and Bascon was in the rear passenger seat. One of the women was on the phone with Newman. At the women’s direction, Harris drove to the east side of Cleveland, near East 70th Street and Superior Avenue, and stopped his car on a residential side street. Harris testified that there was a dark-colored sedan on the other side of the street facing his car. He testified that a man exited this car and walked over to his car. Harris’s window was rolled down, and the man asked him what he had in the car. Shortly thereafter, the man pulled out a revolver and put the gun through Harris’s window. Harris testified that the man put the gun in his face and said “run your pockets.” Meanwhile, Bascon had gotten out of the back seat of Harris’s car and was yelling at the man. Bascon testified that she ultimately got into the assailant’s car and left the scene. According to Harris, he understood that he was being robbed, and he pushed the man’s arm

out of his face. The man shot into the vehicle several times. One shot struck Harris in the cheek and neck, and a second shot struck Harrison in the arm. Harris testified that the gun was clicking, which he understood to mean that the chamber was empty, and he proceeded to drive away.

{¶ 4} Harris, not immediately realizing that he had been shot, drove to a nearby library parking lot and called 911. Harris testified that Harrison was losing a large amount of blood and appeared close to losing consciousness. He took off his shirt to wrap around her wound and subsequently realized that he had been shot when blood dripped onto his chest.

{¶ 5} Responding officers testified that Harrison stated that “D.T.,” a nickname for Newman, was the shooter. Harrison and Harris were both transported to University Hospitals to be treated for their gunshot wounds.

{¶ 6} At trial, Harris testified about his injuries. He showed the jury his scar and explained that hospital staff removed a few pieces of shrapnel from his cheek and informed him that other pieces would eventually work their way out. He testified that his injuries were painful, and that he had been “terrified” that Harrison would die as a result of her injuries. Finally, he testified that he considered himself lucky because if he had been shot in a slightly different location, he would have died.

{¶ 7} On November 15, 2016, Newman was indicted on two counts of attempted murder in violation of R.C. 2923.02 and 2903.02(A), two counts of aggravated robbery in violation of R.C. 2911.01(A)(1), two counts of aggravated robbery in violation of R.C. 2911.01(A)(3), two counts of robbery in violation of R.C.

2911.02(A)(1), two counts of robbery in violation of R.C. 2911.02(A)(2), two counts of robbery in violation of R.C. 2911.02(A)(3), two counts of felonious assault in violation of R.C. 2903.11(A)(1), two counts of felonious assault in violation of R.C. 2903.11(A)(2), and one count of having weapons while under disability in violation of R.C. 2923.13(A)(2). With the exception of the having weapons while under disability count, each count carried one- and three-year firearm specifications.

{¶ 8} Newman entered a plea of not guilty to all charges. On December 22, 2016, Newman's retained counsel filed a motion to withdraw. On January 11, 2017, Newman's newly retained counsel filed a notice of appearance. Throughout the pendency of this case, Newman was referred for multiple competency evaluations, with the latest being at the request of his retained counsel on June 12, 2017. On June 22, 2017, Newman's retained counsel filed a motion to withdraw related to communications between Newman and witnesses in the case that amounted to potential tampering with witnesses. On June 29, 2017, Newman's newly retained counsel, who would remain his counsel through the course of the trial, filed a notice of appearance.

{¶ 9} On October 6, 2017, the state filed a motion to call Harrison as an adverse witness. The basis for this motion was that Newman had, in violation of the no-contact order in place in the case, sent Harrison a letter asking her to sign a statement for him before trial. In response, Harrison sent a letter to the trial court recanting her three previous statements in the case, stating that she did not

remember the incident because she had been high on PCP but that Newman was not the shooter. After a hearing, the court granted this motion. On October 10, 2017, Newman waived his right to a jury trial as to the having weapons while under disability charge and proceeded to a jury trial on the remaining 16 counts.

{¶ 10} At trial, the state called Harris, Harrison, Bascon, the two police officers who responded to the 911 call from Harris, and the doctor who treated Harris and Harrison for their gunshot wounds. Defense counsel made a Crim.R. 29 motion for acquittal at the close of the state's case, and the court denied the motion. Newman then testified on his own behalf. Defense counsel renewed the Crim.R. 29 motion, and the court denied the motion.

{¶ 11} On October 13, 2017, the jury returned a verdict of guilty on all counts as to Harris and one count of felonious assault as to Harrison. They returned a verdict of not guilty on the remaining counts as to Harrison. The court found Newman guilty of having weapons while under disability. The court ordered a presentence investigation report. On November 20, 2017, prior to sentencing, trial counsel filed a motion to withdraw as counsel. The court appointed new counsel for sentencing. On January 22, 2018, Newman's counsel requested the court continue the sentencing hearing in order to allow him to investigate the possibility of filing a motion for a new trial on the grounds that Newman had informed his trial counsel of an alibi witness and trial counsel never investigated.

{¶ 12} On February 14, 2018, defense counsel informed the court that it had thoroughly investigated the alibi and ultimately was unable to secure cooperation

from the alibi witness. Therefore, defense counsel elected not to file a motion for a new trial. The court proceeded to sentence Newman to 25 years in prison.

{¶ 13} Newman appeals, presenting one assignment of error for our review.

### **Law and Analysis**

{¶ 14} In his sole assignment of error, Newman argues that his trial counsel was ineffective for failing to object to various pieces of witness testimony. To establish ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance at trial was seriously flawed and deficient and fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 687-688.

{¶ 15} In deciding a claim of ineffective assistance, reviewing courts indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance, and defendants must therefore overcome the presumption that the challenged action might be considered sound trial strategy. *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), citing *Strickland*.

{¶ 16} Here, Newman challenges his counsel's failure to object to several distinct pieces of testimony that, according to Newman, were prejudicial and irrelevant.

{¶ 17} First, Newman argues that his trial counsel failed to object to testimony regarding the impact of the offense on the victim. Specifically, Newman points to Harris’s belief that Harrison was passing in and out of consciousness, his related statement that he was scared for Harrison, the physical pain he suffered as a result of his gunshot wound, and how lucky he was that he had survived.

{¶ 18} According to Newman, the sole purpose of the aforementioned testimony was to elicit sympathy for Harris and therefore was irrelevant for the jury to consider as evidence. We disagree.

{¶ 19} “Testimony that addresses the impact the crime had on a victim is admissible when the ‘circumstances of the victims are relevant to the crime as a whole.’” *State v. Smith*, 8th Dist. Cuyahoga No. 103483, 2016-Ohio-5512, ¶ 29, quoting *State v. Priest*, 8th Dist. Cuyahoga No. 89178, 2007-Ohio-5958, ¶ 41, citing *State v. Williams*, 99 Ohio St.3d 439, 2003-Ohio-4164, 793 N.E.2d 446. Further, testimony about the nature and extent of the victim’s injuries and his or her trauma is admissible because it is relevant in proving the facts attendant to the offense. *Id.*, citing *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 134. Specifically, the nature and extent of the victim’s injuries is relevant where, as here, the jury is tasked with determining whether the defendant “attempt[ed] to purposely cause the death” or “knowingly cause[d] serious physical harm” to the victims. R.C. 2901.01(A)(5) defines serious physical harm, in relevant part, as:

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

The nature and extent of the victims' injuries as the result of being shot at point-blank range is probative of whether the defendant acted knowingly or purposely to cause death or serious physical harm.

{¶ 20} Here, Harris's discussion of his scar, the shrapnel lodged in his facial tissue, and the pain he suffered was relevant for establishing the nature and extent of the injuries he suffered. Further, with respect to Harris's statements about Harrison's condition and his concern for her, this testimony was elicited in the context of Harris's response to the shooting and the events that occurred immediately following the shooting. In this way, the testimony goes directly to the facts and circumstances surrounding the crime.

{¶ 21} Newman also asserts that counsel should have objected to alleged hearsay testimony from Harris that "every doctor" he talked to about his injuries told him that if the bullet had been any further over it would have killed him. Even if this constituted hearsay testimony, this information otherwise could have been, and in fact was, presented to the jury. Harris testified that he considered himself lucky that a bullet that grazed his face and neck did not kill him. Further, a doctor testified that Harris was lucky that the bullet did not injure any critical structures,



and that any slight movement made by Harris or the shooter could have resulted in Harris's death. Neither of these statements amounts to improper hearsay, and therefore, any objection by counsel to Harris's testimony as to what the doctors told him would have been futile.

{¶ 22} Even if we found that the aforementioned testimony was improper hearsay or victim impact testimony to which trial counsel should have objected, Newman has failed to show he was prejudiced by the alleged improper testimony. Newman has not established that, had the trial court sustained objections to this testimony, the outcome of his trial would have been different.

{¶ 23} In arguing that he was prejudiced, Newman asserts that because Harrison and Bascon were not credible witnesses, the state's case necessarily relied heavily on Harris's testimony. We acknowledge that Harris's testimony was in many ways more probative than that of Harrison or Bascon. We also acknowledge that there was overwhelming evidence in this case beyond Harris's testimony about his injuries. The primary issue at trial was the identity of the shooter. Newman did not dispute that the incident had occurred; he asserted that he was not the shooter. Harris identified Newman as the shooter at trial, and he described the shooter having a tattoo on his arm that was consistent with Newman's own arm tattoo. Harrison made statements to responding officers and hospital personnel identifying Newman as the shooter. Although she recanted these identifications at trial, when the prosecutor asked her whether or not her recantation was a lie, she responded by saying "I don't think he meant to shoot me." In light of this evidence, Newman has

failed to establish that the outcome of his trial would have been different had counsel objected to certain witness testimony.

{¶ 24} Because Newman has not satisfied either prong of the *Strickland* test, we overrule his assignment of error.

{¶ 25} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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RAYMOND C. HEADEN, JUDGE

EILEEN T. GALLAGHER, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR