

2009

Utah v. Sherman Alexander Lynch : Brief of Appellee

Utah Court of Appeals

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Mark L. Shurtleff; Attorney General; Ryan D. Tenney; Assistant Attorney General; Michaela D. Andruzzi; Sandi Johnson; Attorneys for Plaintiff.

Linda M. Jones; Patrick W. Corum; Salt Lake Legal Defenders Association; Attorneys for Defendant.

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Case No. 20090628-CA

IN THE
UTAH COURT OF APPEALS

State of Utah,
Plaintiff/ Appellee,

vs.

Sherman Alexander Lynch,
Defendant/ Appellant.

Brief of Appellee

Appeal from convictions of murder, a first degree felony, and obstruction of justice, a second degree felony, in the Third Judicial District Court of Utah, Salt Lake County, the Honorable Deno G. Himonas presiding.

LINDA M. JONES
PATRICK W. CORUM
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 200
SLC, UT 84111

Counsel for Appellant

RYAN D. TENNEY (9866)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

Michaela D. Andruzzi
Sandi Johnson
Deputy Salt Lake County Attorneys

Counsel for Appellee

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MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Telephone: (801) 366-0180

Michaela D. Andruzzi
Sandi Johnson
Deputy Salt Lake County Attorneys

Counsel for Appellee

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Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals his convictions for murder, a first degree felony, and obstruction of justice, a second degree felony. This Court has jurisdiction under Utah Code Annotated § 78A-4-103(2)(3) (West 2009).

STATEMENT OF THE ISSUES

1. Was Defendant entitled to a specific jury instruction regarding his alibi, where the existing jury instructions already set forth both the State's burden of proof and Defendant's lack thereof, and where the supreme court has repeatedly stated that a claimed alibi does not shift the burdens of proof in any way?
2. Did the prosecutor improperly suggest that Defendant confessed to the crime, where the only thing suggesting that the prosecutor made such a statement is a transcription error?

Standard of Review. Defendant did not raise either of his claims below. As such, he can prevail only if he shows plain error, exceptional circumstances, or ineffective assistance of counsel. *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 34. To the extent that Defendant has invited any error, however, he is precluded from obtaining review for plain error or manifest injustice. *State v. Geukgeuzian*, 2004 UT 16, ¶ 9, 86 P.3d 742; *State v. Malaga*, 2006 UT App 103, ¶¶ 7-10, 132 P.3d 703.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

There are no determinative constitutional provisions, statutes, or rules.

STATEMENT OF THE CASE

On October 10, 2007, Defendant was charged with one count of murder, a first degree felony, and one count of obstruction of justice, a second degree felony. R. 1-2. Defendant was tried from November 10-14, 2008. R. 132, 137, 168, 173-74. A jury convicted Defendant on both counts. R. 173-74.

STATEMENT OF FACTS¹

Defendant's wife is killed in a hit-and-run

On October 3, 2007, Patricia Rothermich was struck from behind while on an afternoon walk near her home in Holladay. R. 283: 53-68. The impact threw Patricia

¹ "In reviewing an appeal from a jury verdict, we view the evidence and all reasonable inferences drawn therefrom in a light most favorable to the verdict." *State v. Johnson*, 2009 UT App 382, ¶ 1 n.2, 224 P.3d 720.

through the air at approximately 24-29 mph. R. 283: 109. Patricia slid 43 feet when she hit the pavement, ultimately coming to rest in some bushes on the side of the road. R. 283: 33, 40, 109.

Although no witness saw the collision, two construction workers working on a nearby home heard it. R. 283: 27. The noise "startled" them. R. 283: 27. One of them later described as the sound of a "large truck hitting a speed bump at a very fast pace." R. 283: 27.

Shortly afterwards, a passing motorist saw Patricia's legs sticking out of the bushes and called 911. R. 283: 33. Paramedics were dispatched to the scene at 3:18 p.m. R. 283: 37, 55. Patricia had "severe" trauma to the back of her head, as well as a "severe" injury to her left calf. R. 283: 59. She was having difficulty breathing, was in "severe compensated shock," and was "barely sustaining life." R. 283: 59. En route to the hospital, her heart failed and she stopped breathing. R. 283: 61, 67. Paramedics tried to revive her with CPR, but she was pronounced dead upon arrival. R. 283: 67-68.

The investigation points to a white truck

Deputy Michael Anderson from the Salt Lake County Sheriff's Office responded to the scene and directed the initial investigation. R. 283: 71-72. Deputy

Anderson had advanced training in accident reconstruction, and worked with both the "violent crimes unit and the major accident team." R. 283: 69-70.

Based on evidence at the scene, Deputy Anderson was able to observe the "slide path" that Patricia's body had followed after striking the road. R. 283: 88-89. Deputy Anderson concluded that Patricia had been walking against traffic on the left side of the road when she was hit from behind. R. 283: 98. Deputy Anderson also concluded that the vehicle had not struck her at either a direct angle or from the side, but had instead veered across the road at a "slight angle" before hitting her. R. 283: 99. Deputy Anderson found no pot holes or adverse road conditions that would have caused the vehicle to lose control. R. 283: 100.

Based on the height of Patricia's injuries and the nature of the slide pattern, Deputy Anderson immediately suspected that the vehicle that had struck Patricia had a high front-end, such as a "truck or a van." R. 283: 97. Deputy Anderson also noted some white paint from the vehicle that had transferred to the back of Patricia's pants during the collision. R. 283: 93.

Deputy Anderson also found three broken zip ties in the roadway. R. 283: 81, 85. The zip ties had fallen in a "consecutive" order "in line with the collision path," thereby suggesting that they had "come off of the vehicle that was involved in this collision." R. 283: 82-83. Based on their retained shapes, it was "clear" that they

had "been adhered to something" on a "vehicle." R. 283: 84, 85. Moreover, Deputy Anderson noted that one of the zip ties had "what appeared to be white paint within the locking zip of the tie itself." R. 283: 82-83.

Defendant behaves suspiciously

While the initial investigation unfolded, Deputy Christopher Schroeder went to the home that Patricia shared with Defendant, her husband of eight years. R. 284: 32-33; Exh. 94 at 11:40. Defendant was not home when Deputy Schroeder arrived, but arrived shortly thereafter looking "nervous" and "distraught." R. 284: 33-34. Deputy Schroeder then told Defendant about the collision and offered to take him to the hospital. R. 284: 35, 38.

Defendant was "very emotional," "[a]lmost to the point of hyperventilating." R. 284: 39. Even considering the circumstances, Deputy Schroeder thought that Defendant's reaction was "unusual." R. 284: 40. Detective Chad Reyes met Defendant at the hospital. R. 284: 46. He, too, thought that Defendant was acting "odd." R. 284: 46. Detective Reyes has been involved in approximately 50 situations where family members were informed that loved ones had been killed. R. 284: 46. Defendant's reaction was "[d]ifferent from everyone else that [he had] been around in a similar situation." R. 284: 46. In short, he thought that Defendant was acting "suspicious[ly]." R. 284: 47.

Don Carter had had been Patricia's neighbor for 32 years. R. 284: 65. He received a call shortly after the collision and met Defendant at the hospital. R. 284: 66. Like Deputies Schroeder and Reyes, Carter thought that Defendant's reaction was "peculiar." R. 284: 68. Defendant was "sobbing" and acting in a manner that Carter thought was "way over the top." R. 284: 67. Defendant kept saying "What am I going to do?," repeating that phrase "over and over and over and over again. . . . He must have said it at least 50 times." R. 284: 67. Carter thought, "you know, I've seen some grief, but I've never seen such a reaction as this." R. 284: 68.

Carter was also struck by something Defendant started to say to him right after Carter arrived. Defendant had hugged him and then "started to say, 'What have I,' then immediately corrected and said, 'What am I going to do.'" R. 284: 67. Although this did not "mean anything" to Carter "at the time," Defendant's sudden change of phrase "caught [Carter's] ear." R. 284: 67.

Given Defendant's emotional state, Carter offered to take Defendant back to his home. R. 284: 69-71. Kathleen Mathie, another neighbor, came by, and the three ordered Chinese food. R. 284: 75-76. During their meal, Defendant opened a fortune cookie and told his neighbors that his fortune said that he would be "coming into some money" soon. R. 284: 76. Defendant said that he "found that quite amusing," and "talked about it a lot" that night. R. 284: 98. Mathie thought

this was "kind of inappropriate." R. 284: 98. When someone pointed out that Patricia's home was in the name of her adult children, Defendant said "something about her retirement" and "maybe something about insurance" as well. R. 284: 76.

Sometime that night, Defendant told Carter and Mathie that he was going to take a walk by the Jordan River alone. R. 284: 71. Based on Defendant's emotional state, Carter told him that he would not leave him alone, but would instead follow behind Defendant during his walk. R. 284: 71-72. Defendant objected, but after Carter insisted, Defendant dropped the plan. R. 284: 71-72.

Carter then insisted that Defendant spend the night at Carter's home. R. 284: 72. At approximately 3:30 a.m., Carter woke up and discovered that Defendant and his van were gone. R. 284: 73. Concerned that Defendant "shouldn't be alone" in his agitated state, Carter called police. R. 284: 74. An officer found Defendant back at his house at about 8 a.m. the next morning. R. 284: 107. During the conversation with the officer, Defendant "brought up the fortune cookies" incident from the previous night, and he told the officer that his fortune had said that "I'm going to come into a large inheritance." R. 284: 109.

Officers learn that Defendant owned the truck that killed Patricia

During the ensuing days, Defendant appeared on television asking the public for assistance in finding the driver who had killed his wife. R. 284: 126-27. One of

the people who saw Defendant's televised pleas was Defendant's girlfriend, Nancy Scott. R. 284: 126-27.

Nancy and Defendant had been dating for the previous six months. R. 284: 116. Defendant had refused to let Nancy come to his home, instead insisting that they meet at Nancy's home. R. 284: 117-18. Defendant had also repeatedly told Nancy that he was single. R. 284: 120, 126-28. On one occasion in late September, however, Nancy had seen Defendant walking near his home with Patricia. R. 284: 120. When Nancy later asked Defendant about it, Defendant told her that Patricia was his "landlord." R. 284: 120.

Nancy and Defendant had a date scheduled for October 3, 2007, the night that Patricia was killed. R. 284: 123. Nancy called Defendant at 7:15 p.m. and confirmed that he would be coming over. R. 284: 124. Defendant did not say that anything was wrong during that conversation, but called back 15 minutes later and told her that he needed to stay home because his landlord had been killed. R. 284: 124-25. In contrast to his behavior elsewhere that night, Defendant was not "sobbing" when he spoke with Nancy, nor did he seem "overly anxious." R. 284: 125.

The next day, Nancy saw Defendant on television speaking about his wife. R. 284: 127. This was "devastating" to Nancy, because she had not known that Defendant was married. R. 284: 128. But when Nancy spoke with Defendant later

that day, he denied that Patricia was his wife, explaining that his public statements to the contrary were part of an effort to posthumously protect the public image of his live-in landlord. R. 284: 128.

A few days later, Nancy heard news reports that officers were looking for a white truck in connection with the collision. R. 284: 129. Nancy remembered that she had helped Defendant buy a used white truck from an auction house in Murray at the end of August, so Nancy called police. R. 284: 129-30. After telling them about her relationship with Defendant and his recent truck purchase, Nancy took officers to the auction house, where officers confirmed that Defendant had purchased a white truck. R. 284: 211.

Nancy then took officers to a storage garage in Holladay where Defendant had kept the truck. R. 283: 114; 284: 130, 133, 137. The truck was not there, but officers found scraps of carpet on the ground with white spray paint on them. R. 283: 115; 284: 218-19. Allan Ostler, the owner of the garage, later confirmed that Defendant had rented the garage from him for the previous two years. R. 284: 213. Ostler also confirmed that Defendant had kept a white truck there during September, that Defendant had painted some rust spots on the truck with white spray paint, and that the truck's hood did not close properly. R. 284: 213. Finally,

Ostler told officers that he had asked Defendant to remove the truck from his garage during the last week of September. R. 284: 214.

A few days later, officers received a phone call from a man who was renting an abandoned home nearby for storage. R. 283: 145-47. The home's garage had been boarded up to prevent vandalism. R. 283: 146. In late September, however, the boards had been unsecured from the garage and someone had placed a white truck inside. R. 283: 147. Officers subsequently heard from two neighbors of the abandoned home who reported that during the last week of September, a truck had been briefly parked outside the garage, covered with a tarp and secured with stakes. R. 284: 155, 165-66.

When officers arrived at the abandoned garage, they found the white truck. R. 283: 116. The truck's VIN number matched that of the truck Defendant had bought from the auction house in August. R. 283: 130. Inside, officers found an auction sticker with Defendant's name on it, dated August 25, 2007. R. 283: 116, 120; R. 285: 71. Officers later found the truck's title and registration hidden in a hollow space behind the license plate of the van that Defendant regularly drove. R. 285: 53, 56.

Significantly, officers found evidence linking Defendant's truck to Patricia's death in four respects.

First, when Deputy Anderson examined the exterior of the truck, he found “exactly the kind of damage” he had “expect[ed] to see” from the collision that killed Patricia. R. 283: 125. A tow hook on the front of the truck lined up with where her left calf had been split open, a splash guard lined up with injuries she sustained to her right calf, and a “deformation” on the hood matched where Patricia’s head would have struck. R. 283: 136.

Second, the hood of Defendant’s truck did not close properly, and officers found a zip tie fragment in the engine compartment—suggesting that zip ties had been used to secure the hood. R. 283: 137, 139. A forensic lab compared that fragment to one of the broken zip ties that had been found on the road near Patricia’s body. R. 285: 32-33. The fragment found in Defendant’s truck had “random fracture lines” that “match[ed] up perfectly” with the fracture lines in the zip tie found in the road. R. 285: 35.

Third, officers discovered that in addition to the white base coat that was painted at the factory, portions of Defendant’s truck had been touched up with white spray paint. R. 284: 181, 199. A forensic analyst compared the paint from Defendant’s truck to the white paint that transferred to Patricia’s clothing during the collision. R. 284: 199. The analyst concluded that the smears on Patricia’s pants had come from the “same distinct type” of spray paint as that used on Defendant’s

truck. R. 284: 199. The analyst also concluded that some paint "fragments" also found on Patricia's clothing matched the factory paint from Defendant's truck. R. 284: 202.

Finally, officers had the original owner of Defendant's truck examine it. The original owner noted several rust spots that had been covered with white paint since he had owned the truck. R. 285: 76-77. He also noted damage to the truck that had not been there previously, including a missing antenna, a crack in the windshield, and the damage to the front of the hood. R. 285: 76-77. Finally, he noted that although the hood of the truck had not latched properly, he had never used zip ties to secure it. R. 285: 76-77.

**Defendant is arrested for Patricia's murder after giving
evasive answers to police**

On October 8, 2007, Detective Adamson interviewed Defendant. R. 285: 107.² At the time of the interview, Defendant was unaware that officers had located his truck in the abandoned garage. Exh. 94 at 40:30-41:40, 51:30.

Detective Adamson first discussed the circumstances surrounding Patricia's death. When Detective Anderson asked Defendant whether he had any life

² A video of this interview was introduced as Exhibit 94 below and is contained in the record. That video contains a timer superimposed on the screen. The State will cite to it as Exh. 94 at (time).

insurance on Patricia, Defendant said that he had a policy on her through a credit union that would pay him approximately \$125,000. Exh. 94 at 24:10-26:38. Defendant also said that he thought she might be covered under his work policy as well. Exh. 94 at 25:25-25:35.

Detective Adamson asked Defendant if he knew Nancy Scott. Exh. 94 at 46:16. Defendant responded that she was a "friend from church, a nurse." Exh. 94 at 46:20. When pressed, Defendant admitted that he had been having an affair with her for several months, and that his wife did not know about the affair. Exh. 94 at 46:40 to 48:32.

Detective Adamson asked Defendant whether he owned any vehicles. Defendant said that he owned a van, and specifically denied owning "any other vehicles." Exh. 94 at 15:02-15:06. Defendant also denied making any "recent purchases or sales of vehicles or anything like that." Exh. 94 at 20:50-21:00.

Detective Adamson told Defendant that officers knew that he had rented space in Ostler's garage, but Defendant denied keeping any vehicles there. Exh. 94 at 31:36-31:48. When Detective Adamson asked Defendant whether he had kept a truck there, Defendant shifted stories and acknowledged that he had, but claimed that that had been "awhile back." Exh. 94 at 31:55. Pressed for details, Defendant

said that he had bought a "cheap pickup" for his teenage son, explaining "that if you hit something with a truck you won't get hurt." Exh. 94 at 35:00-38:52.

When asked where the truck was, Defendant said that he no longer owned it. He claimed that it had broken down at 4500 South on the freeway two to four weeks earlier, and that when a man named "Chuck" had stopped to help, Defendant decided to just give the truck to him. Exh. 94: at 35:50-37:40. Defendant said that he did not have any contact information for "Chuck." Exh. 94: at 41:21.

At the close of the interview, Detective Adamson informed Defendant that officers already had his truck in their possession. Exh. 94 at 51:25. Defendant was then arrested for Patricia's murder. Exh. 94 at 51:40.

During a subsequent search of Defendant's house, officers found a pair of khaki pants in Defendant's hamper with white paint on them. R. 284: 53-54, 229; 285: 135. Officers also found a tarp and stakes matching those described by the neighbors of the abandoned garage, as well as five white spray paint cans. R. 285: 59, 62, 65, 131, 135. As noted, testing showed that this spray paint matched the paint found on the back of Patricia's pants.

On October 10, 2007, Defendant was charged with one count of murder and one count of obstruction of justice. R. 1-2.

Defendant presents alibi evidence at trial

At trial, Defendant first claimed that other trucks in the area could have struck Patricia. One witness reported seeing a white truck in the area between 3:20-3:25 p.m. with two Hispanic males inside. R. 284: 18, 25-26; 285: 114. Other witnesses reported seeing a red truck in the area as well. R. 283: 49-51; 284: 10, 12; 285: 115.

The State responded by showing that when officers had investigated those leads, they had not panned out. Deputy Anderson testified that officers had been unable to find another white truck with damage matching this collision, let alone one with zip ties attached to the front that matched those found at the collision site. R. 284: 23. Deputy Anderson also noted that the reports of a red truck were inconsistent with the evidence showing that Patricia had been struck by a white vehicle. R. 284: 10-11; 285: 129-30.

Defendant also claimed that he had an alibi for the time of the collision. R. 283: 24; 284: 18. Defendant had told officers that he had gone walking with Patricia that afternoon, but had left her to go shopping at the Costco in Murray. R. 284: 36, 48; Exh. 94 at 7:30 to 8:10. Officers obtained surveillance video confirming that Defendant had gone to the Murray Costco that afternoon. R. 284: 20-21. Receipts

and surveillance video showed that Defendant had purchased gasoline at 3:44 p.m., and milk at 3:55 p.m. R. 284: 110.

In response, the State never argued that Defendant had not made this trip. Instead, the State showed that this trip was not inconsistent with Defendant having driven the truck that killed Patricia. While investigating the crime, Detective Adamson repeatedly timed himself driving from the scene of the collision to the abandoned garage where the truck had been found, and then from there to the Costco in Murray. R. 285: 83. Detective Adamson drove this route at different times of day, including the time of day at issue here, and he never went above the speed limit. R. 285: 102-03. On average, the trip took 14 minutes, and it never took as long as 20 minutes. R. 285: 83, 102-03. As noted, 911 dispatched paramedics at 3:18 that afternoon, and Defendant purchased gas at 3:44 p.m. — a time gap of 26 minutes. R. 283: 55; 284: 109. Detective Adamson therefore testified that Defendant could have “easily” driven from the collision site to the abandoned garage, and then to Costco in time to “pump fuel” by 3:44 p.m. R. 285: 84.

Moreover, officers also ascertained that Defendant’s truck had been driven only 18 miles since its original owner had traded it in. R. 285: 76-77, 125. Detective Adamson then drove the route that Defendant would have taken if he had used this truck in the attack. R. 285: 78. Adamson drove from the auction house to Ostler’s

garage, from there to the abandoned garage, then to the collision scene and back to the abandoned garage. R. 285: 77-78. The total mileage was 12.2 miles. R. 285: 79.

In addition, officers were unable to corroborate Defendant's claim that he had given his white truck to a man named Chuck at 4500 South. R. 285: 110. Specifically, officers "found no evidence of Chuck." R. 285: 110. But more importantly, officers realized that even if Defendant had driven the truck to 4500 South as he claimed, and "Chuck" had then driven the truck straight back to the abandoned garage, the accumulated mileage "would have exceeded the 18 miles that ha[d] been logged" on the truck since it was sold to the auction house. R. 285: 110.

The jury instructions repeatedly set forth the burdens of proof

At trial, the jury was repeatedly instructed that the State bore the burden of proof. For example, the preliminary instructions included the following:

- Instruction 4 instructed the jury that Defendant was presumed innocent. R. 177.
- Instruction 13 instructed the jury that "[t]he prosecution has the burden of proof. It's the one making the accusations in this case. The defendant isn't required to prove innocence—you must start by assuming it." R. 179.

- Instruction 14 instructed the jury that before it could “give up your assumption that the defendant is innocent, you must be convinced that the defendant’s guilt has been proven beyond a reasonable doubt.” R. 179.
- Instruction 15 instructed the jury that the “prosecution has the burden of proving the defendant guilty beyond a reasonable doubt,” and that if a juror thought that “there’s a real possibility that he’s not guilty, you must give him the benefit of the doubt and find he’s not guilty.” R. 179.

The closing jury instructions were similarly clear about the State’s burden of proof:

- Instruction 14 instructed that “all presumptions of law, independent of evidence, are in favor of innocence, and a defendant is presumed innocent until proven guilty beyond a reasonable doubt.” R. 182. This instruction further instructed that “the burden is always on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.” R. 182.
- Instruction 15 instructed that Defendant could be convicted only if the jury was “firmly convinced that the defendant is guilty of the crime charged.” R. 182-83.

- Instruction 21 instructed that the jury could convict only if the prosecution had proven Defendant guilty beyond a reasonable doubt. R. 184.
- Instruction 34 instructed that Defendant could be found guilty of murder only if the State proven that "the defendant, Sherman A. Lynch," had "caused the death of Patricia Rothermich." R. 187.
- Instruction 40 similarly instructed that Defendant could be found guilty of obstructing justice only if it concluded that "the defendant, Sherman A. Lynch," had obstructed justice. R. 193.

Defense counsel discussed these instructions with the court before closing arguments. During that discussion, defense counsel affirmatively stated that he did not "take exception to any of the instructions," and that there were "no instructions that [he] had asked for that have not been given." R. 285: 142.

Following deliberations, Defendant was convicted on both counts. R. 173-74.

SUMMARY OF ARGUMENT

Point I: Defendant first claims that the trial court committed plain error or manifest injustice when it failed to sua sponte issue a jury instruction on his alibi defense. But Defendant invited any error when his counsel affirmatively stated that the court had issued every instruction that he had requested and that he had no

objections to those given. Defendant is therefore not entitled to plain error review of the trial court's failure to give an alibi instruction.

Defendant alternatively argues that his counsel was ineffective for not requesting an alibi instruction. Defendant specifically argues that he was entitled to an alibi instruction because alibi is an affirmative defense. Contrary to Defendant's claim, however, alibi is not an affirmative defense. Instead, it is simply a claim that the prosecution has not proven its case. Defendant therefore was not entitled to an alibi instruction, and his counsel did not perform deficiently by not asking for one.

But even if defense counsel did perform deficiently by not requesting the instruction, Defendant was not prejudiced. The jury in this case was repeatedly instructed that the prosecution bore the burden of proof, as well as that Defendant bore no burden of proof of his own. Thus, the instruction Defendant now proposes would have simply repeated instructions that the jury had already received.

Point II: Defendant next claims that the prosecutor falsely claimed that he had confessed to the crime during her closing argument. But while the transcript currently suggests that the prosecutor did make such a statement, Defendant admits in his brief that this transcript is flawed. And when viewed in context, it appears that the prosecutor's statement was actually an argument about the

inferences that could be drawn from the evidence, not an attempt to falsely attribute a confession to Defendant.

Defendant's argument is thus based on a statement that the prosecutor never made, and his plain error and ineffective assistance claims to the contrary should therefore be rejected.

ARGUMENT

I.

DEFENDANT WAS NOT ENTITLED TO A REDUNDANT JURY INSTRUCTION ON HIS CLAIMED ALIBI

Defendant argues that the trial court erred by failing to sua sponte instruct the jury about his "affirmative defense" of alibi. Aplt. Br. 19-28. Defendant acknowledges that he did not raise this claim below, but nevertheless asks this Court to review it for plain error, manifest injustice, or ineffective assistance of counsel. Aplt. Br. 28-42.

But Defendant invited any error by affirmatively approving the jury instructions before they were submitted to the jury. As a result, he can obtain review only for ineffective assistance of counsel. When analyzed in that context, Defendant's claim fails.

A. Defendant invited any error by affirmatively approving the jury instructions.

Under the invited error doctrine, “a party on appeal cannot take advantage of an error committed at trial when that party led the trial court into committing the error.” *State v. Alfatlawi*, 2006 UT App 511, ¶ 26, 153 P.3d 804 (quotations and citation omitted). This occurs when there are “[a]ffirmative representations that a party has no objection to the proceedings . . . because such representations reassure the trial court and encourage it to proceed without further consideration of the issues.” *State v. Winfield*, 2006 UT 4, ¶ 16, 128 P.3d 1171. In the context of jury instructions, invited error occurs when a defendant “affirmatively approve[s] of the jury instructions at trial.” *Alfatlawi*, 2006 UT App 511, ¶ 26 (alteration in original). Thus, where counsel “confirm[s] on the record that the defense had no objection to the instructions given by the trial court,” or even “fail[s] to object to an instruction when specifically queried by the court,” the invited error doctrine applies. *State v. Geukgeuzian*, 2004 UT 16, ¶ 10, 86 P.3d 742.

A party who invites error is precluded from subsequently obtaining appellate review for plain error or manifest injustice. *Geukgeuzian*, 2004 UT 16, ¶ 9; *Alfatlawi*, 2006 UT App 511, ¶ 26. Defendant invited any error in the instructions here.

The court discussed the jury instructions with defense counsel before closing arguments, during which the following exchange occurred:

THE COURT: Same question for the defendant or defense counsel, do you take exception to any of the instructions?

DEFENSE COUNSEL: No, your honor.

THE COURT: Will you acknowledge there are no instructions that you have asked for that have not been given?

DEFENSE COUNSEL: Yes, your honor.

R. 285: 142.

Thus, defendant “affirmatively approved of the jury instructions at trial,” *Alfatlawi*, 2006 UT App 511, ¶ 26 (alteration in original), by “confirm[ing] on the record that the defense had no objection to the instructions given by the trial court,” and “fail[ing] to object . . . when specifically queried by the court.” *Geukgeuzian*, 2004 UT 16, ¶ 10. The invited error doctrine therefore applies, and Defendant cannot obtain relief for plain error or manifest injustice.

B. Defendant did not receive ineffective assistance of counsel.

To prevail on an ineffective assistance claim, Defendant “must show: (1) that counsel’s performance was objectively deficient, and (2) a reasonable probability exists that but for the deficient conduct defendant would have obtained a more favorable outcome at trial.” *State v. Clark*, 2004 UT 25, ¶6, 89 P.3d 162 (citing

Strickland v. Washington, 466 U.S. 668, 687 (1984)). "Failure to satisfy either prong will result in our concluding that counsel's behavior was not ineffective." *State v. Diaz*, 2002 UT App 288, ¶ 38, 55 P.3d 1131.

Here, Defendant claims his alibi defense was an affirmative defense, and that because it was an affirmative defense, he was entitled to a jury instruction on it. Aplt. Br. 19-27. Defendant then argues that his counsel was ineffective for not requesting that instruction. Aplt. Br. 37-42. Defendant is incorrect under both prongs of the ineffective assistance analysis.

1. There was no deficient performance.

When assessing deficient performance, "a defendant bears the burden of demonstrating why, on the basis of the law in effect at the time of trial, his or her trial counsel's performance was deficient." *State v. Marble*, 2007 UT App 82, ¶ 20, 157 P.3d 371 (quoting *State v. Dunn*, 850 P.2d 1201, 1228 (Utah 1993)). "When pursuing this analysis, we again indulge in the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that under the circumstances, the challenged action might be considered sound trial strategy." *Id.* (quotations and citation omitted).

As noted, Defendant argues that his counsel performed deficiently by failing to request an instruction on his alibi defense. Aplt. Br. 37-42. But Defendant's claim ultimately fails because alibi is not an affirmative defense under Utah law.

An affirmative defense is an "assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, *even if all the allegations in the complaint are true.*" Black's Law Dictionary, *Defense* (8th ed. 2004) (emphasis added). For example, even if the prosecution proves that a defendant intentionally killed another person, the defendant can still be acquitted by proving that he was acting in self-defense. Utah Code Ann. § 76-2-402 (West 2010). Or even if the prosecution proves that a defendant bought illegal drugs, the defendant can still be acquitted if he proves that he was entrapped, or that he was acting under compulsion. Utah Code Ann. § 76-2-302 (West 2010); Utah Code Ann. § 76-2-303 (West 2010).

When raising an affirmative defense, a defendant therefore does not claim that he did not do what the prosecution says he did; rather, he simply claims that in these particular circumstances, his conduct was not actually criminal.

Prior to 1973, Utah's criminal law—including the law of affirmative defenses—was developed through the common law. *State v. Tuttle*, 730 P.2d 630, 632-33. (Utah 1986). "In an effort to rationalize, clarify, and improve upon the frequently archaic common law definitions of crimes, the legislature in 1973

repealed wholesale all the prior substantive criminal statutes (including, necessarily, defenses) and enacted a sweeping new penal code that departed sharply from the old common law concepts." *Id.* "As if to emphasize its departure from the old law, the 1973 Code specifically stated that the 'common law of crimes is abolished.'" *Id.* (citation omitted).

Under the current model, "all criminal defenses" must therefore "'be grounded in the specific code sections' under which the defendant is charged," *State v. Miller*, 2008 UT 61, ¶ 16, 193 P.3d 92, and Utah's courts are "bound by the legislature's decision to categorize" and define affirmative defenses. *State v. Low*, 2008 UT 58, ¶ 24, 192 P.3d 867. Thus, "Utah's criminal law is statutory." *Miller*, 2008 UT 61, ¶ 16.

Significantly, there is no statutory provision defining alibi as an affirmative defense, nor was there when this case was tried in November 2008. *Cf. State v. Marble*, 2007 UT App 82, ¶ 20 (stating that an ineffective assistance claim must be that "on the basis of the law in effect at the time of trial, his or her trial counsel's performance was deficient"). Thus, contrary to Defendant's claim, alibi was not an affirmative defense and he was not entitled to a jury instruction on it.

Defendant responds on two levels in his brief. After citing to a number of cases discussing the concept of affirmative defenses in general, Defendant points to

two early Utah Supreme Court decisions that analyzed the question and found that alibi is an affirmative defense. Aplt. Br. 19-27 (citing *State v. Waid*, 67 P.2d 647, 651 (Utah 1937), and *State v. Saunders*, 22 P.2d 1043, 1045-46 (Utah 1933)).

But *Waid* and *Saunders* were issued decades before the criminal law codification of 1973. *Tuttle*, 730 P.2d at 632-33. That codification “abolished” the “the ‘common law of crimes’ . . . including, necessarily, defenses.” *Id.* Thus, *Waid* and *Saunders* are no longer controlling.

In addition to *Waid* and *Saunders*, Defendant also cites to a number of other decisions that have admittedly referred to alibi as an affirmative defense. *See, e.g., State v. Low*, 2008 UT 58, ¶ 28, 192 P.3d 867 (parenthetically referring to “affirmative defenses such as a valid alibi or legitimate self-defense”); *Knoll*, 712 P.2d at 214-15 (stating, without any alibi-specific analysis, that the prosecution has the burden of proof “with respect to such defenses as lack of mental capacity and alibi”); *State v. Wilson*, 565 P.2d 66, 67-68 (Utah 1977) (stating that alibi “stands on the same footing as other so-called defenses” such as “entrapment, self-defense, lack of mental capacity, or of criminal intent”).

Like *Waid* and *Saunders*, however, those decisions are incorrect as a result of the 1973 criminal law codification. In addition, those decisions are also at odds with

three other decisions from the Utah Supreme Court – all of which were issued after *Waid* and *Saunders* – that have reached a contrary conclusion regarding alibi.

The first is *State v. Whitely*, 110 P.2d 337, 337-38 (Utah 1941). Like Defendant here, Whitely claimed that he was somewhere else when the crime at issue occurred. *Id.* But the trial court held that in order to rely on this defense, Whitely had the burden of proving his whereabouts. *Id.* The supreme court reversed on appeal, holding that Whitely bore no such burden. *Id.*

In so doing, the supreme court expressly concluded that alibi is *not* a separate, affirmative defense that carries its own burden of proof. Instead, the court characterized alibi as nothing more than a refutation of the State's case-in-chief. Thus, "in all cases where the presence of the accused is necessary to render him responsible" for a crime, the State "must prove that he was there as part of its case." *Id.* If the defendant claims that he was not there when the crime was committed, his "so-called 'defense of alibi' is a defense only in the sense that any contradiction of facts which the government must prove to establish guilt may be called a 'defense.'" *Id.* (emphasis added).

In *State v. Romero*, 554 P.2d 216, 219 (Utah 1976), the supreme court analyzed another case in which the defendant claimed that he was somewhere else at the time of the crime. When considering Romero's alibi, the court concluded that his defense

had done nothing more than call into question the State's underlying factual allegation: "As to defendant's alibi that he was at the zoo and the park on the day in question, *such alibi is not an affirmative defense* but merely a denial that he was where he was said to be at the time the crime was committed." *Id.* (emphasis added).

Finally, the supreme court re-emphasized that alibi is not an affirmative defense in *State v. Fulton*, 742 P.2d 1208 (Utah 1987). There, the court noted that "an alibi defense . . . is not one that has merit independent of whether the State can prove the statutory elements of the crime; rather an alibi defense challenges the State's ability to prove the statutory elements." *Id.* at 1213. Thus, "the mere assertion of an alibi defense does not impose on the prosecution" an "additional burden." *Id.* Instead, the "burden on the prosecution remains the same, i.e., to establish all elements of the crime beyond a reasonable doubt." *Id.*

Here, Defendant never claimed that his conduct was justified "even if all the allegations in the complaint [were] true." Black's Law Dictionary, *Defense*. For example, he never argued that he was somehow justified in killing Patricia with his truck. Rather, he claimed that he did not kill her, that he was actually "at Costco on the afternoon of October 3." Aplt. Br. 24. Thus, his "alibi [was] not an affirmative defense but merely a denial that he was where he was said to be at the time the crime was committed." *Romero*, 554 P.2d at 219. And as a result, his "alibi defense"

had no “merit independent of whether the State [could] prove the statutory elements of the crime; rather [his] alibi defense” only challenged “the State’s ability to prove the statutory elements.” *Fulton*, 742 P.2d at 1213.

Defendant’s Costco defense was therefore not an affirmative defense, and he was not entitled to a jury instruction on it. As a result, his counsel did not perform deficiently by failing to request a specific jury instruction on it.

2. In any event, there was no prejudice.

Defendant has also failed to demonstrate that he was prejudiced by his counsel’s alleged failure. To prove prejudice, he must show that there is “a reasonable probability” that he would have “obtained a more favorable outcome at trial” if the instruction been given. *Clark*, 2004 UT 25, ¶ 6 (quotations and citation omitted). Here, even if Defendant has shown that he was entitled to a jury instruction on alibi, his claim still fails because he has not shown prejudice.

According to Defendant, the jury was misled with respect to the burden of proof. Apl’t. Br. 19-28. Defendant claims that the jury needed an alibi instruction that he “had no particular burden of proof” with respect to his alibi, and that he was instead “entitled to an acquittal if there was any basis in the evidence from either side sufficient to create a reasonable doubt.” Apl’t. Br. 26.

Although the jury was not given a specific alibi instruction, the jury was correctly and repeatedly instructed regarding the applicable burdens of proof. These instructions, read as a whole, left no room for confusion regarding the State's burden of proof, particularly with regards to Defendant's claim that he was elsewhere at the time of the hit-and-run that killed his wife.

In the instructions that were given, the jury was told that it could not convict Defendant unless his "guilt has been proven beyond a reasonable doubt," that there was no "real possibility that he's not guilty," that it was "firmly convinced" that Defendant had killed his wife — i.e. that he, "Sherman A. Lynch," had "caused the death of Patricia Rothermich." R. 177, 179, 182-83, 187. And the jury was also instructed that when assessing the evidence, the "prosecution has the burden of proof," "the burden is always on the prosecution to prove guilt beyond a reasonable doubt," that Defendant was entitled to both a presumption of innocence and "the benefit of the doubt," that "defendant isn't required to prove innocence," that the jury must "must start by assuming" that Defendant was innocent, and that Defendant "never" had the "burden or duty of calling any witnesses or producing any evidence." R. 177, 179, 182.

Thus, while there was no specific alibi instruction, this jury was still unmistakably told that the prosecution had the burden of proof and that Defendant

did not. Defendant's newly proposed alibi instruction would therefore have been redundant, and Defendant was therefore not prejudiced by its absence.

II.

DEFENDANT SHOULD NOT OBTAIN A REVERSAL BASED ON A TRANSPARENT TRANSCRIPTION ERROR REGARDING THE PROSECUTOR'S CLOSING ARGUMENT

At trial, Don Carter testified that when he first arrived at the hospital, Defendant hugged him and then "started to say, 'What have I,' then immediately corrected himself and said, 'What am I going to do?'" R. 284: 67. Although this brief exchange did not "mean anything" to Carter "at the time," Defendant's change of phrase still "caught [his] ear." R. 284: 67.

During her rebuttal argument, the prosecutor referred to this exchange and argued that it suggested guilt. The transcript currently reads as follows:

And the other thing he said was to a person he considered his best friend that goes to the hospital, that's there with him in his time of grief, and he walks up and the first thing he says, "is what have I - what am I going to do without her? What have I **done**?" He killed his wife. He did it intentionally and then he tried to cover his tracks by hiding his truck in the garage.

R. 285: 193 (emphases added).

Defendant now argues that the prosecutor "engaged in misconduct" by incorrectly alleging that he had said "what have I done?" Aplt. Br. 43-50. Defendant acknowledges that he did not object below, but nevertheless asks this Court to

review the prosecutor's alleged misstatement for plain error or ineffective assistance of counsel. Aplt. Br. 47-50.

A. The trial court did not commit plain error.

Defendant first claims that the trial court plainly erred by failing to correct the prosecutor's alleged misstatement. Aplt. Br. 43-50. "[T]o establish the existence of plain error and to obtain appellate relief from an alleged error that was not properly objected to, the appellant must show the following: (i) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant." *State v. Dunn*, 850 P.2d 1201, 1208-09 (Utah 1993).

1. The trial court did not obviously err when it allowed the prosecutor to draw a reasonable inference from Carter's testimony.

During closing arguments, a prosecutor has "the duty and right to argue the case based on the total picture shown by the evidence or the lack thereof." *State v. Ross*, 2007 UT 89, ¶ 55, 174 P.3d 628. A prosecutor has "considerable latitude" and is entitled to "fully discuss from [her] perspective[] the evidence and all inferences and deductions it supports." *Id.* at ¶ 55; *see also State v. Johnson*, 2007 UT App 184, ¶ 42, 163 P.3d 695.

As noted, Defendant claims that the prosecutor incorrectly quoted him when she claimed that he had said “what have I done?” when speaking with Don Carter at the hospital. Aplt. Br. 45-46. In the context of his plain error argument, he thus argues that the trial court should have sua sponte corrected the prosecutor’s alleged misstatement.

But the audio of the actual argument shows why the trial court did not interject. Specifically, the audio demonstrates that the prosecutor was not actually quoting Defendant at all when she made the statement at issue.³

The current transcript of this argument reads as follows:

And the other thing he said was to a person he considered his best friend that goes to the hospital, that’s there with him in his time of grief, and he walks up and the first thing **he says**, “**is** what have I – what am I going to do without her? What have I **done**?” He killed his wife. He did it intentionally and then he tried to cover his tracks by hiding his truck in the garage.

R. 285:193 (emphases added). As noted by Defendant in his brief, the placement of the closing quotation marks suggests that the prosecutor was quoting him when she said “What have I done?” Aplt. Br. 43-50.

³ On June 2, 2010, this Court supplemented the record to include the video/audio of this argument. The CD is externally paginated as R. 292, and the internal video contains a timer superimposed on the image. The State will cite to it as R. 292 at (time of argument). In addition, the State has attached a copy of that recording as Addendum A to this brief.

This statement was made from 6:34:08 to 6:34:37 p.m. on the final day of trial. *See* R. 292 at 6:34:08 to 6:34:37. When listened to, the recording shows that the prosecutor actually drew a distinction between the sentence: “What have I – what am I going to do without her?” and the sentence “What have I done?” This occurred on two levels. First, the prosecutor let five full seconds of silence pass between the two sentences. R. 292 at 6:34:23 to 6:34:28. And second, the prosecutor raised the inflection of her voice on the second sentence in an inquisitive, questioning manner. R. 292 at 6:34:28 to 6:34:31. Her raised inflection clearly suggested that at that point, she was not quoting Defendant at all, but was instead asking the jury to draw the inference—i.e. that when Defendant had said “What have I--” and then stopped himself, he had stopped himself from saying “What have I done?”

In the context of a closing argument, the prosecutor’s appeal to inference was entirely appropriate. *See Ross*, 2007 UT 89, ¶ 55 (stating that a prosecutor has “considerable latitude” to “fully discuss from [her] perspective[] the evidence and all inferences and deductions it supports”). But more importantly, this recording—and particularly the on-site reaction to it by those who were in the courtroom—demonstrates why Defendant’s plain error claim necessarily fails.

As noted above, a plain error claim can only succeed if the error should have been obvious below. *Dunn*, 850 P.2d at 1208-09. And when viewed in this light, it is significant that neither the trial court nor defense counsel objected when the prosecutor made this statement, thereby suggesting that those present understood that the prosecutor was no longer quoting Defendant at that point. As explained by the Massachusetts Court of Appeals, the “failure of defense counsel to object to statements made by a prosecutor during the closing is a matter to which we attach significance.” *Commonwealth v. Leach*, 901 N.E.2d 708, 717 (Mass. App. 2009) (quotations and citation omitted). “It is not only a sign that what was said sounded less exciting at trial than appellate counsel now would have it seem, but it is also some indication that the tone and manner of the now challenged aspect of the prosecutor’s argument were not unfairly prejudicial.” *Id.*

In other words, if the prosecutor had “obviously” misquoted Defendant at that point in her argument, one would have expected some reaction from Defendant, his counsel, or the court. But the lack of any such reaction shows that, at worst, the statement was ambiguous, thereby defeating a claim of obvious error.

In the absence of any such reaction or objection, Defendant’s claim ultimately rests upon the placement of the quotation marks in the current transcript as sole support for his claim that the prosecutor was quoting him. Given this, it is

significant that Defendant's own brief has already seen fit to correct the placement of the quotation marks surrounding the very sentence at issue. As noted above, the transcript currently quotes the prosecutor as follows: "And the other thing he said was to a person he considered his best friend that goes to the hospital, that's there with him in his time of grief, and he walks up and the first thing **he says, "is** what have I - what am I going to do without her? What have I **done?"** R. 285: 193 (emphases added).

By putting the initial quotation mark outside the word "is," the transcript thus currently suggests that the quotation began there, rather than with the word "what." R. 285: 193. But the prosecutor plainly did not mean that Defendant approached Carter and said: "Is what have I - what am I going to do without her?" Such a statement would make no linguistic sense. Rather, from context alone, the prosecutor clearly meant to say that Defendant began with: "What have I..." Thus, the State believes that the transcript should read: "...and the first thing he says is, 'what have I...'"

With respect to this error, Defendant apparently agrees. He has noted this very error in his brief, and, without comment or leave of court, he has already corrected it. Aplt. Br. 45. The relevant passage from Defendant's brief accordingly quotes the prosecutor as follows:

In this case, the prosecutor represented in final rebuttal statements that when Lynch encountered his "best friend" at the hospital after Roterhmich died, he walked up to his friend "and the first thing he says [is 'w]hat have I— what am I going to do without her? What have I done?' He killed his wife."

Aplt. Br. 45 (quoting R. 285: 193) (alteration added in Defendant's brief).

In short, although Defendant openly acknowledges that the opening quotation marks are incorrect, he nevertheless charges the prosecutor with official misconduct based on the placement of the closing quotation marks in that very same passage. But this record does not obviously show that the closing quotation marks were correctly placed, that the prosecutor ever claimed that Defendant had said "What have I done?" Rather, the recording of the argument, along with the non-reaction from those in the courtroom, demonstrates that the prosecutor did nothing more than ask the jury to draw an inference from Carter's testimony. This was permissible in the context of a closing argument, and Defendant has not shown that the trial court committed obvious error.

2. Defendant also has not shown prejudice.

In addition to showing that the error was obvious, Defendant must also show that it was "harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant." *Dunn*, 850 P.2d at 1208-09. The question is whether, "under the circumstances of the particular case," the jurors were "probably

influenced by those remarks.” *Ross*, 2007 UT 89, ¶ 54. If “proof of defendant's guilt is strong, the challenged conduct or remark will not be presumed prejudicial.” *Id.*

In this case, there was overwhelming evidence of Defendant's guilt. Prosecutors proved that six weeks before the murder, Defendant purchased a white truck (R. 283: 116, 120; 284: 130, 211; 285: 53, 56, 71); Defendant surreptitiously stored his truck during the intervening weeks (R. 283: 147; 284: 155, 165-66, 213; 285: 59, 62); paint from Defendant's truck ended up on Patricia's clothing during the fatal hit-and-run (R. 284: 181-202); Defendant's truck was damaged in ways matching the collision (R. 283: 125-36; 285: 76-77); Defendant lied to his girlfriend about his relationship with his wife (R. 284: 120, 126-28); Defendant misled police about his relationship with his girlfriend (Exh. 94 at 46:18); Defendant lied to police about whether he had purchased the truck, as well as the fact that he had stored it in Ostler's garage (Exh. 94 at 15:01-16:15, 20:50-21:00, 31:36-31:48); Defendant tried to convince police that he had given the truck to an unidentifiable stranger on the freeway, rather than storing it in an abandoned garage near his home (Exh. 94 at 35:50-37:40); Defendant behaved suspiciously in the hours following the murder, alternating between excessive hysteria about Patricia's death when he was speaking with police and neighbors (R. 284: 39-40, 46-47, 67-68), and dispassionate lies about the incident when speaking to his girlfriend (R. 284: 125); and finally, Defendant

openly and repeatedly discussed a financial payout that he expected to come as the result of Patricia's death (R. 284: 74, 76, 98).

Given this, Defendant has not shown that the prosecutor's single statement at the close of her rebuttal led to his conviction. Rather, the reason for this conviction was the jury's assessment of Defendant's guilt after hearing from 22 witnesses during a three-day trial (with testimony and argument spanning over 500 pages of transcript), as well as its review of 95 separate exhibits. R. 200-06, 283-85. That evidence conclusively established Defendant's guilt. Even if Defendant has shown that the prosecutor erred with this statement, that error was harmless.

B. Defendant did not receive ineffective assistance of counsel.

Defendant alternatively claims that his counsel was ineffective for failing to object to the prosecutor's comment. As noted above, Defendant can prevail on this claim only if he shows both deficient performance and prejudice. *Clark*, 2004 UT 25, ¶ 6; *Diaz*, 2002 UT App 288, ¶ 38. Defendant's claim fails under both prongs.

First, to show deficient performance, a defendant "must overcome the strong presumption that his trial counsel rendered adequate assistance, by persuading the court that there was no conceivable tactical basis for counsel's actions." *State v. Marble*, 2007 UT App 82, ¶ 11, 157 P.3d 371 (quotations and citation omitted). It is settled in this regard that trial counsel does not perform deficiently by failing to

raise a futile objection. *See, e.g., State v. Kelley*, 2000 UT 41, ¶ 26, 1 P.3d 546; *State v. Whittle*, 1999 UT 96, ¶ 34, 989 P.2d 52. “[P]roof of ineffective assistance of counsel cannot be a speculative matter but must be a demonstrable reality.” *Nicholls v. State*, 2009 UT 12, ¶ 36, 203 P.3d 976 (quotations and citation omitted).

As discussed above, however, there is nothing “demonstrable” about the alleged error. *Id.* Nothing in the record indicates that the prosecutor claimed that Defendant had said “What have I done?” To the contrary, the audio shows that the prosecutor only asked the jury to draw an inference that this is what Defendant had meant to say. Given this, defense counsel had no reason to object.

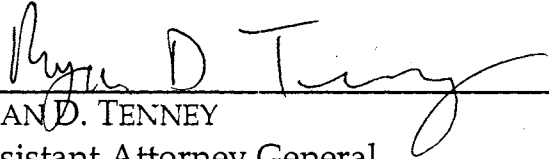
Second, Defendant has also failed to show a reasonable likelihood that the result of the trial would have been different without the alleged error. As discussed above, the State presented overwhelming evidence of Defendant’s guilt. In these circumstances, Defendant has not shown that this isolated comment was an improper basis for his conviction.

CONCLUSION

For the foregoing reasons, the Court should affirm Defendant’s convictions.

Respectfully submitted June 10, 2010.

MARK L. SHURTLEFF
Utah Attorney General



RYAN D. TENNEY
Assistant Attorney General
Counsel for Appellee

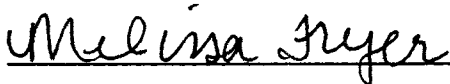
CERTIFICATE OF SERVICE

I certify that on June 10, 2010, two copies of the foregoing brief were

☐ mailed ☒ hand-delivered to:

Linda M. Jones
Patrick W. Corum
Salt Lake Legal Defender Assoc.
Salt Lake City, UT 84111

A digital copy of the brief was also included: ☒ Yes ☐ No



Addendum A