[Cite as *State v. Sharpe*, 2023-Ohio-2570.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

SHAINQUAN SHARPE aka SHAIQUAN SHARPE,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0021

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2019 CR 930

BEFORE:
Cheryl L. Waite, David A. D'Apolito, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*, Assistant Prosecutor, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Michael A. Partlow, P.O. Box 1562, Stow, Ohio 44224, for Defendant-Appellant

Dated: June 30, 2023

WAITE, J.

{¶1} Appellant Shainquon M. Sharpe (also called Shaiquon Sharpe) appeals a February 28, 2022 judgment entry of the Mahoning County Court of Common Pleas convicting him of several criminal offenses stemming from a shooting. Appellant challenges the admission of several photographs he describes as gruesome, a flight instruction given to the jury, and argues that his convictions are against the manifest weight of the evidence. For the reasons that follow, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This case is related to but not consolidated with another appellate case, *State v. Taquashon Ray* (22 MA 0026). Appellant and Ray were codefendants in this matter and were tried jointly. This case only concerns Appellant's conviction.

{¶3} The incident at issue stemmed from an act of retaliation related to a prior drug deal. Allegedly, one of the victims in this case, Edward Morris, shot a man named Brian Benson during the drug-deal-turned-robbery attempt. According to the state, Benson decided to wait for tensions to cool before he put retaliated against Morris, by putting out a request for a "hit" on Morris. (Trial Tr., p. 722.) Appellant and Ray were apparently staying in the Columbus area and learned that Benson was looking for someone to kill Morris for him. It is noted that the state alleges Brian Benson is also known by an alias, Jeffrey Johnson. However, due to the state's failure to provide certain discovery, the trial record is somewhat muddled and confusing in this record, and the trial court ruled (after certain witnesses had already used the name Benson) that the state

could not use this name, and was limited to calling this person by his alias. (Trial Tr., p. 917.)

{¶4} On October 31, 2018, Appellant exchanged the following text messages with a person referred to as "Bossman Young." Young is not further described within the record.

> [Appellant] Bet I won't be in Youngstown till 7. * * *
>
> [Young] Okay. When you coming back? * * *
>
> [Appellant] When I get mobile and these guys up. * * * Guns up.

(Trial Tr., p. 953.) According to the state, this message reflects preparation to accept and carry out the hit on Morris, as it refers to obtaining guns and arranging travel to Youngstown.

{¶5} On November 1, 2018, Appellant exchanged messages with a man named Demetrius Dawson. As the record contains only Appellant's side of the conversation, Dawson's responses are unknown. Similar to Young, there is no further information or description of Dawson within the record.

> [Appellant] Shit you tell me. I'm trying to meet the nigga with that play on Edward. * * * And I need 9 bullets. We was looking for some more yesterday.

(Trial Tr., p. 960.) Again, the state's theory is that this message was to further the killing, as it reflects an attempt to contact the person ordering it and an attempt to obtain ammunition.

{¶6} On November 4, 2018, Appellant's codefendant, Ray, messaged Johnson/Benson:

> [Ray] Shit you still want Ed or naw? * * *
>
> [Johnson/Benson] I ain't think about that shit. I'm doing me, bra. But if it come down to it, then hey. * * *
>
> [Ray] I know you wasn't already know, bra, but I got him with [sic] his bro where I want him, you know? [sic] * * * [C]all my phone (330)881-0368 and we can talk about it when you're not busy, bra, but I can get it done ASAP.

(Trial Tr., pp. 963-964.)

{¶7} On November 6, 2018, Appellant texted a person named Chiana Sharpe: "I need you to take me out east right now. I got a 10 band move." (Trial Tr., p. 954.) According to testimony from law enforcement, ten bands refers to $10,000, and the payment offered for the killing of Morris was $10,000. These texts from both Appellant and Ray were offered by the state as evidence that the two men both actively sought to accept and carry out the hit together.

{¶8} Ultimately, there were three victims in this case: Edward Morris, Valarcia Blair, and a three-month-old child named Tariq. Blair is the mother of Tariq and it appears that Morris is the child's father. On the day of the incident, Blair was at her mother's

house in Youngstown before driving off with Morris in his silver Saturn. Blair was in the front passenger seat and Tariq was in a car seat in the back.

{¶9} Morris parked the Saturn along a devil strip on Pasadena Avenue in Youngstown. Testimony at trial was offered to suggest that the house nearest his parked car was a known drug house. A white Ford Focus pulled up and parked in front of the Saturn. It is unclear what happened immediately after the two vehicles parked, however, at 7:04 p.m. police heard gunshots and a Spotshotter (a mechanism used to quickly alert law enforcement to shots fired) reported gunshots on Pasadena.

{¶10} Youngstown Police Department Patrol Officer John Wess was the first to respond to the scene. He had heard the shots fired while he was having what he described as a late lunch in a nearby parking lot. He immediately proceeded to the scene and arrived within a minute or so due to his close proximity. He observed Morris in the driver seat of the parked Saturn with visible gunshot wounds and significant bleeding. Patrolman Wess noticed a gun on Morris' lap, so he first retrieved the gun for officer safety before tending to Morris. Morris was blinking and taking shallow breaths, but as it was clear to Patrolman Wess that Morris would not survive, he turned his attention to Blair.

{¶11} As Patrolman Wess attended to Blair, who also had gunshot wounds, he noticed she kept gesturing with her head to the backseat. It was then that Patrolman Wess saw the car seat. He immediately checked Tariq, who was bloody and had sustained multiple gunshot wounds. Because the closest ambulance was four minutes away, Patrolman Gregory Tackett and Patrolman Kelly transported Tariq to the hospital in a patrol car. When the ambulance arrived at the scene, it transported Blair to the

hospital. The paramedics declared Morris dead on the scene. Both Blair and Tariq succumbed to their injuries at the hospital.

{¶12} Investigators located approximately thirty shell casings in and around the Saturn. A single .45mm caliber shell matched the pistol Morris had on his lap when police arrived. At least nineteen of the casings were 7.62 by .39mm caliber, consistent with ammunition used in an AK-47 rifle. The remaining shell casings were consistent with a .39mm caliber firearm and appeared to come from a Luger handgun.

{¶13} Ten minutes after the shooting, Appellant's codefendant, Ray, messaged Johnson/Benson:

> [Ray] Check and mate. * * *
>
> [Johnson/Benson] [W]hat's popping? * * *
>
> [Ray] Call me (330)881-0368. * * *
>
> [Johnson/Benson] In the car deep. * * *
>
> [Ray] Job done.

(Trial Tr., pp. 964-965.)

{¶14} A witness told investigators that they did not see the shooting, but had observed a man standing near the hood of the Ford Focus who took off running northbound on Gibson immediately after the shooting. Law enforcement quickly turned their attention to the Ford Focus and learned that it belonged to a woman named Michelle Douglas.

{¶15} According to Douglas, she had just begun dating Appellant, whom she referred to as "Mann Mann." On the day of the shooting, she had picked up Appellant earlier in the day and they went to a Taco Bell. While there, Appellant texted someone named "Little" and told Douglas that they needed to pick him up at Wick Park. At trial, Douglas identified Ray as "Little." (Trial Tr., p. 641.) She drove the two men to her place of work and then let them use her car. They later picked her up at work and dropped her off at a plaza, where her friend picked her up and took her to a birthday party, so that they could keep her car. Around 8:34 p.m. that day, Appellant informed Douglas that her car was parked on Pasadena and she would not be getting it back anytime soon. He did not explain why but urged her to stay away from the Pasadena area.

{¶16} When police interviewed Appellant, he informed Detective Ronald Barber, Jr., that Ray is his cousin and that they lived in Columbus. He denied that he had been on Pasadena Avenue on the night of the shooting, claiming that he had been at his cousin Kenneth's house on the west side of Youngstown.

{¶17} Ray gave police investigators conflicting stories. He first said that his car had broken down and he left it near the intersection of Pasadena and Gibson. He then told investigators that he went to Pasadena Avenue to buy marijuana at the drug house. While he was still inside his car, he heard gunfire and ducked down, hiding in the car until the gun fire ceased. When the shooting stopped, he claims the car would not start so he exited and ran down Gibson to a gas station, where he called his brother to pick him up.

{¶18} The Ohio Bureau of Criminal Investigation crime lab discovered DNA on one of the .39mm shell casings. This DNA alerted police to a possible match through the Combined DNA Index System ("CODIS"). CODIS matched Appellant to the DNA found

at the scene. When they learned of this alert, police obtained a warrant for a DNA sample from Appellant. Testing showed Appellant was a likely contributor of the DNA on the casing. Before learning there was DNA on the shell casing, Ray had agreed to submit a DNA sample. However, the only usable DNA included Appellant, so investigators saw no need to obtain Ray's sample.

{¶19} Cell phone records were admitted to show various text messages and calls by the pair. The records were also admitted to show that Ray's cell phone "pinged" off a nearby cell phone tower and placed him near the scene. (Trial Tr., p. 932.) Roughly one half hour before the shooting, the towers appear to show that Ray traveled from the north side of Youngstown to the scene. One minute after the shooting, the outer perimeter of a circle marking Ray's location included the sidewalk in front of the scene of the shooting. The towers showed him travelling northwest of the scene until Appellant used Ray's phone in an area located on the west side to call his girlfriend, Michelle Douglas.

{¶20} An autopsy revealed Morris suffered six gunshot wounds to the head, neck, and trunk. Blair had five gunshot wounds to the trunk and upper right extremity. Tariq had multiple gunshot wounds, most significantly to his torso and upper thigh.

{¶21} Appellant and Ray were charged in a single indictment with nine counts pertaining to both, one pertaining solely to Appellant, and one solely attributed to Ray. The joint charges included: three counts of aggravated murder, unspecified felonies in violation of R.C. 2903.01(A)(F), R.C. 2929.02(A); one count of aggravated murder, an unspecified felony in violation of R.C. 2903.01(C)(F), R.C. 2929.02(A); three counts of murder, unspecified felonies in violation of R.C. 2903.02(A)(D), R.C. 2929.02(B); one count of obstruction of justice, a felony of the third degree in violation of R.C.

2921.32(A)(5), (C)(4); and one count of improperly discharging a firearm at or into a habitation, a felony of the second degree in violation of R.C. 2923.61(A)(1), (C). Except for the obstruction charge, each charge carried an attenuated firearm specification in violation of R.C. 2941.145(A). In addition, Appellant was charged with tampering with evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1)(B).

{¶22} On January 11, 2021, Appellant filed several motions, including a motion in limine to exclude photographs of the victims and a motion to sever the trials. Although the court initially granted the motion to sever, the state later filed a motion for reconsideration of this issue which the court granted.

{¶23} While Appellant was incarcerated awaiting trial, he made several phone calls that were recorded by the jail monitoring system. Two calls to Appellant's mother were played for the jury at trial. In the first, dated November 11, 2018, Appellant told his mother that he would call her back with a phone number and instructed her to call the number and arrange for someone to pick up money owed to him, which should amount to $5,000. During the second call, which occurred on the same day, he provided her with a telephone number and told her to have someone that she trusted pick up the money. She asked him whose number he wanted her to call and he cleared his throat and said, "catching what I just did?" (State's Exh. 264.)

{¶24} After a thirteen-day trial, the jury convicted both codefendants on all counts as charged in the indictment. On February 28, 2022, after considering merger issues, the trial court sentenced Appellant to the following: life without parole until after thirty years (Count I), life without parole until after thirty years (Count II), life without parole until after thirty years (Count III), five years of incarceration (Count XI) and three years for each of

the four firearm specifications. The firearm specifications were ordered to run consecutively and prior to the remaining sentences, which were also ordered to run consecutively. It is from this entry that Appellant timely appeals.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED IN PERMITTING APPELLEE TO INTRODUCE A VARIETY OF PHOTOGRAPHS WHICH WERE EXTREMELY GORY, OF LITTLE PROBATIVE VALUE, AND UNDULY PREJUDICIAL TO APPELLANT.

{¶25} Appellant argues that the court erroneously allowed the state to introduce a large number of "gory" photographs into evidence. First, Appellant argues that no photographs were necessary, as the death of the victims and the cause of their death were uncontested. Second, Appellant argues that some of the photographs were duplicative. Third, Appellant argues that the purpose of admitting these photographs was to inflame the jury, as the sole issue at trial was limited to whether Appellant participated in the actions that caused the victims' deaths.

{¶26} The state responds that the purpose of admitting the photographs was to illustrate the testimony of a witness. The photographs demonstrated the number of gunshot wounds per victim, the trajectory of the bullets, and that the shots were fired from several angles, supporting the state's theory that an execution-like shooting occurred, with shots seemingly fired from a circle of offenders. The photographs also showed the clear intent to cause death and lack of regard for how many, and which, people were

killed in what was described as an "overkill." Even if this Court were to find error, the state urges that it would be harmless based on the overwhelming evidence of guilt.

General Law

{¶27} Pursuant to Evid.R. 403(A): "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury."

{¶28} The Ohio Supreme Court has held that a trial court did not commit error in admitting photographs in support of a forensic pathologist's testimony that a victim sustained injuries sufficient to cause death, particularly as the photographs showed the jury the effects of all of the injuries suffered by the victim. *State v. Todd*, 7th Dist. Columbiana No. 12 CO 28, 2015-Ohio-2682, ¶ 28-30, citing *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, 767 N.E.2d 161, ¶ 56. Even a photograph that can be characterized as gruesome is admissible if the trial court, in exercising its discretion, feels that it would be useful to assist the jury. *State v. Woodwards*, 6 Ohio St.2d 14, 25, 215 N.E.2d 568 (1966).

{¶29} The Ohio Supreme Court has also stated that photographs that illustrate a coroner's testimony and provide a general perspective of a victim's body are relevant and admissible. *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶ 103. The Court noted that such photographs provide the jury with a "total appreciation of the nature and circumstances of the crimes." *Id*. at ¶ 109, citing *State v. Evans*, 63 Ohio St.3d 231, 251, 586 N.E.2d 1042 (1992).

{¶30} "A gruesome photograph is admissible only if its ' "probative value * * * outweigh[s] the danger of prejudice to the defendant." ' " *State v. Ford*, 158 Ohio St.3d

139, 2019-Ohio-4539, 140 N.E.3d 616, ¶ 237, citing *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 96; *State v. Morales*, 32 Ohio St.3d 252, 258, 513 N.E.2d 267 (1987). However, "even a photo that satisfies the balancing test is inadmissible if it is repetitive or cumulative." *Id,* citing *Mammone, supra*; *State v. Thompson*, 33 Ohio St.3d 1, 9, 514 N.E.2d 407 (1987). Absent gruesomeness or shock value, numerous photographs challenged simply due to the number, do not result in prejudicial error. *Diar* at ¶ 232. "A trial court's decision that a photo satisfies the standard is reviewable only for abuse of discretion." *Ford*, at ¶ 237, citing *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶ 69.

{¶31} Appellant did not object to the admission of any of these photographs at trial, thus he is limited to a plain error analysis. On appeal, Appellant does not object to any specific photo. Instead, he generally challenges "a variety of gory photographs of the victims, including photographs from the crime scene and the Coroner's Office." (Appellant's Brf., p. 6.) Thus, the photographs of the crime scene and autopsies that were admitted into evidence will each be addressed to the extent necessary.

Crime Scene Photographs

{¶32} State's exhibits four through seven were taken the day after the murder to show the general area where the crime was committed. State's exhibits eight through eleven were taken the night of the shooting and demonstrate the positioning of the Ford Focus and the Saturn. State's exhibits twelve through sixteen show property damage to a nearby house and some evidence of shell casings. State's exhibits seventeen though twenty-one show damage to the Ford Focus. None of these photographs can be characterized as at all disturbing.

{¶33} The first somewhat graphic photographs that appear in this series of photographs were taken of the Saturn, State's exhibits twenty-two through seventy. The graphic nature is unsurprising, as this is where the shooting and the death of the victims occurred. It is noted that Morris' body is still located inside the car when many of these photographs were taken and his death is apparent. This set of photographs is designed to show the scene at the time the investigation began, when the coroner had not yet arrived to take Morris' body. Even so, Morris' position in the vehicle was relevant to the investigation at that point and the photos reveal evidence of shell casings located near the body that officers likely did not want to disturb by moving Morris before taking the photographs.

{¶34} State's exhibits 22, 24, and 25 show the vehicle from the front windshield. Although the purpose of the photograph is to show bullet holes in the windshield, Morris' body can be seen slumped over in the seat with his face looking towards the ceiling. Although the body and Morris' expression in one of these photographs might be seen as unsettling, it is neither gruesome nor graphic. State's exhibit 23 merely shows a bullet hole in glass.

{¶35} State's exhibit 26 shows the Saturn from a side angle with both doors open. Again, Morris' body remained in the vehicle, however, his face is not visible in this photograph and no blood can be seen. The photograph shows broken glass from the two door windows and glass surrounding the car. Parts of the window frame can be seen barely hanging to the frame and the glass on the side view mirror is gone. There is nothing gruesome in these photos.

{¶36} State's exhibits 27 through 30, 36, 41-59, 60, 62, 64-66, 70 were taken to show angles and various damage to the vehicle. State's exhibits 31 and 67 show Morris in the car. Again, while the photographs may be somewhat unsettling, there is nothing graphic or gruesome about them and they were taken to show the decedent as the photographer found him. Photographs showing bodies as discovered are admissible as probative. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 135.

{¶37} State's exhibits 32-34, 37-40, 63-64, 66, 68-69 shows various blood patterns in the vehicle. The Ohio Supreme Court has held that "photographs of bloodstains are generally not gruesome." *Ford, supra,* at 239. The use of such photographs are "probative of [the defendant's] intent and the manner and circumstances of the victims' deaths." *Id.*

{¶38} State's exhibits 34-35 and 40 show various shell casings not depicted in other photographs.

{¶39} State's exhibits 122-123 show bloodstains on the car seat. State's exhibits 124-128 show bullet holes and damage to the outer car seat. State's exhibits 129-133 show bloodstains and bullet holes in the baby's clothing. Again, the Supreme Court has held that bloodstains are not gruesome. As to the photographs of the infant car seat and bloody clothing, the Supreme Court held that photographs of a three-year-old and five-year-old who had been stabbed in the throat while strapped into their car seats were admissible. *Mammone, supra,* at ¶ 100.

{¶40} One of the points repeatedly made by the state throughout was that this was a murder undertaken with complete disregard for the lives of innocent victims and without regard for who and how many people were inside the vehicle. *Trimble* at ¶ 134.

(Gruesome photographs can be "probative of [the defendant's] intent and the manner and circumstances of the victims' deaths" and that the probative value of each outweighed the danger of unfair prejudice.)

{¶41} This record reveals that, although numerous, these photographs were admitted for the purpose of illustrating the investigation at the scene. Several of these photographs depict the shell casings spread across the scene and other evidence that investigators believed to be relevant. The photographs were discussed during the testimony of Officer Brad DiTullio. Officer DiTullio is a member of the Youngstown Police Department Crime Scene Unit, and testified that he takes crime scene photographs for the purpose of memorializing the evidence before he collects it. Thus, the photographs were relevant to the description of the scene as officers arrived and to show the placement of items of evidence exactly where they were found. The photographs are also relevant to show the intent of the shooter and the manner of the killing. As such, the trial court did not err in admitting these photographs.

Autopsy Photographs

{¶42} Preliminarily, we note that it appears the state originally intended to admit a large number of autopsy photographs, however, the court limited the state to thirty. Also, we again note that Appellant does not attack any specific photograph, instead arguing generally that they should not have been admitted.

{¶43} Beginning with exhibit 149, a photograph of Morris laying on the autopsy table fully clothed from his upper lip to his belt line, while the purpose of the photograph is unclear, it is not inherently gruesome.

{¶44} Exhibit 151 is a close up of exhibit 149 and focuses on a metallic fragment on Morris' clothing. The Ohio Supreme Court has held that photographs of bullets and shell casings are not gruesome. *State v. Moreland*, 50 Ohio St.3d 58, 64, 552 N.E.2d 894 (1990).

{¶45} Exhibit 152 shows Morris' face and shoulders after the blood had been removed from his face. The focus of the photograph is a gunshot wound to his left cheek which was described as consistent with an entrance wound. (Trial Tr., p. 351.) Similarly, exhibits 166, 167, 168, 170, 174, 175, and 176 depict several entrance and exit wounds in various places on Morris' arms, back, hip, and buttocks. Although some blood is visible, the photographs are not gruesome. Photographs of gunshot wounds are admissible to support a medical examiner's testimony. *Trimble, supra,* at ¶ 143.

{¶46} Exhibit 154 is an x-ray of Morris' skull and neck bones which show the bullet that entered through his cheek. Similarly, exhibit 160 is an x-ray of Morris' chest depicting a bullet. Exhibit 171 is an x-ray image of Morris' hip area again showing a bullet. In citing to a case originating out the Seventh District, the Ohio Supreme Court has held that photographs of x-rays showing where the coroner recovered slugs were not gruesome, shocking, or prejudicial. *Trimble, supra*, at ¶ 145, citing *State v. Williams*, 7th Dist. Mahoning No. 98 CA 74, 2000 WL 309390, *11 (Mar. 20, 2000).

{¶47} Exhibit 158 shows Morris lying face down on the table from the small of his back to his buttocks. While some dried blood is present, the photograph is not gruesome. The photograph shows three visible gunshot wounds to the back area. This photograph is particularly relevant, as these were characterized as entrance wounds, supporting the state's theory that the shooters shot at Morris from several angles. Thus, the photograph

is relevant to the manner of death. The Ohio Supreme Court has held that photographs, even if gruesome, are admissible to give the jury an "appreciation of the nature and circumstances of the crimes" and to show "intent and the manner and circumstances of the victims' deaths." *Trimble, supra,* at ¶ 134, 136.

{¶48} Exhibit 161 depicts a large opening in what appears to be Morris' chest, apparently created to retrieve a bullet as shown in the photograph. The photograph is graphic, as it depicts an opened part of the body and reveals blood and muscles. While somewhat graphic, the photograph depicts "a lethal gunshot wound because it goes through vital structures, including the liver, the spleen. And the most severely [sic] the bottom part of the heart. So this one will cause death in a matter of seconds to minutes." (Trial Tr., pp. 355-356.) In addition to this photograph, the court admitted exhibit 163, which showed the recovered bullet from the area and exhibit 164, which showed the heart area where the bullet "tore through the bottom of the heart." (Trial Tr., p. 356.) Exhibit 164 is quite graphic, and is a close up view of the victim's organs surrounded by blood. Although the photograph is graphic, it does show the path of the bullet as it struck the victim's heart and likely caused his death. The record reveals the court declined to admit a similar, but closer, view of the same injury. Photographs supporting testimony of the cause of death are generally admissible. *Trimble, supra,* at ¶ 154. In *Trimble,* a photograph showing damage to a lung, blood in a chest cavity, and a metal probe inside a victim's neck was admissible as it supported testimony about the cause of death. *Id.*

{¶49} The next set of photographs depicts the injuries of Blair. Beginning with Exhibit 180, it shows multiple gunshot wounds to her upper right arm. Exhibit 184, 185, 191, and 192 show various gunshot wounds to Blair's back and side. As previously

discussed, photographs of gunshot wounds are admissible to support a medical examiner's testimony. *Trimble, supra,* at ¶ 143.

{¶50} Exhibit 183 is somewhat graphic as it shows "a large irregular tear in the skin showing some dried muscle at the base of the tear." (Trial Tr., pp. 362-363.) Although the photograph is somewhat graphic, it cannot be characterized as gruesome. Even so, photographs showing the destructive nature of wounds help establish intent. *Trimble, supra,* at ¶ 147.

{¶51} Exhibit 187 depicts an x-ray of Blair's chest showing a bullet. As previously discussed, x-rays showing where the coroner recovered slugs are not omitted as gruesome, shocking, or prejudicial. *Trimble, supra,* at ¶ 145.

{¶52} Exhibit 188 shows a bullet lodged in Blair's muscle. As previously discussed, photographs showing the impact of bullets are generally admissible, particularly as they assist in testimony about a victim's injuries. *Trimble, supra,* at ¶ 154.

{¶53} Exhibit 196 is a photograph of Tariq and showed his unclothed body. The photo reveals two sets of stitches. The first starts at the top left of his chest near his left arm pit and goes across his entire chest to the right armpit area. The second set starts just below the first line of stitches and ends around his waistline. The photograph appears to have been taken shortly after death as he appears to have a hospital tag on his wrist and is still hooked up to a breathing tube and catheter.

{¶54} Exhibit 197 is a close up of Tariq's groin area. The photograph depicts stiches resulting from gunshots to the child's scrotum and thigh. While the photograph is graphic, it depicts injuries described by the medical testimony.

{¶55} Exhibit 199 shows Tariq lying face down unclothed. The photograph shows that the incision running across his front chest extended half way around his back.

{¶56} Exhibits 201 and 203 show the left and right side of Tariq and depict large gaping holes resulting from the gunshot wounds. Each of the photographs taken of Tariq depict various injuries and the extent of those injuries, which are admissible in accordance with *Trimble.*

{¶57} In summation, although some of the photographs admitted may be seen as graphic, and a few could be characterized as gruesome, this record reflects they are all admissible in accordance with *Trimble, Mammone,* and *Ford.* Appellant claims that all of these photographs are irrelevant, as the cause and fact of death were not at issue. This exact argument was rejected in *Mammone, supra,* at ¶ 103. Additionally, while Appellant may not have contested certain elements of the crime at trial, the state clearly has the burden of proving each and every element and no stipulation was entered in this case. Had the state not proven all of the elements of the murder charges, the argument on appeal likely would have been that the state failed to meet its burden of proving each element beyond a reasonable doubt. We note that there were approximately 200 crime scene and autopsy photographs taken, but only the photos discussed herein were published to the jury and admitted into evidence. Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY GIVING A FLIGHT INSTRUCTION TO THE JURY OVER THE OBJECTIONS OF APPELLANT.

{¶58} Appellant argues here that the court improperly provided the jury with a flight instruction. Appellant's argument is two-fold. One, he argues that this specific instruction was preceded by a comment from the trial court that "[t]estimony has been admitted indicating that the defendants fled the scene." (Trial Tr., p. 1185.) Appellant argues that, unlike his codefendant, there is no evidence that Appellant fled the scene. This argument leads to his second, that this statement demonstrates the danger of trying two codefendants in one trial where an instruction is made regarding both but factually applies only to one.

{¶59} The state responds that the court's statement is factually correct, as circumstantial evidence revealed that Appellant was at the scene of the murders and then quickly moved to the west side of town. The state argues that his flight allowed him to claim that he had always been on the other side of town during the commission of the crime, while evidence was produced to rebut this claim in the form of cell phone pings and DNA evidence. Even so, the state again cites to the overwhelming evidence of Appellant's guilt.

{¶60} A flight instruction is considered within the context of the entire set of jury instructions. *State v. Price*, 60 Ohio St.2d 136, 398 N.E.2d 772 (1979), paragraph four of the syllabus. A jury instruction is proper when: (1) relevant to the facts presented; (2) it provides the correct statement of the relevant law; and (3) it is not already covered in the general charge to the jury. *State v. Kovacic*, 11th Dist. Lake No. 2010-L-065, 2012-Ohio-219, ¶ 15. The Ohio Supreme Court has consistently held that the fact of the accused's flight is admissible as evidence of the accused's consciousness of guilt and, thus, of guilt itself. *State v. Eaton*, 19 Ohio St.2d 145, 160, 249 N.E.2d 897 (1969), vacated on other

grounds, 408 U.S. 935, 92 S.Ct. 2857, 33 L.Ed.2d 750; holding reaffirmed by *State v. Williams*, 79 Ohio St.3d 1, 11, 679 N.E.2d 646 (1997).

{¶61} "When trial counsel files a timely objection to jury instructions pursuant to Crim.R. 30, a reviewing court will not reverse the trial court's decision in the matter absent an abuse of discretion." *State v. Italiano*, 7th Dist. Mahoning No. 19 MA 0095, 2021-Ohio-1283, ¶ 9, appeal not allowed, 163 Ohio St.3d 1496, 2021-Ohio-2270, 169 N.E.3d 1283, ¶ 9; *State v. Taylor*, 7th Dist. Mahoning No. 08 MA 122, 2010-Ohio-1551, ¶ 26; *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989). Generally, a trial court has broad discretion as to jury instructions, but must "fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder." *Italiano* at ¶ 9, citing *State v. Comen*, 50 Ohio St.3d 206, 210, 553 N.E.2d 640 (1990).

{¶62} The state contends that it was Appellant's cell phone which pinged off a nearby tower, placing his phone in the vicinity of the crime scene at the time of the shooting. However, while the transcripts are somewhat confusing, it appears that the pings on which the state relies came from Ray's phone, not Appellant's. The confusion appears to arise because the state produced evidence that Appellant used Ray's phone at 8:34 p.m., an hour and one-half after the shooting, to call his girlfriend, Douglas. (Trial Tr., p. 895.) However, the record indicates that Ray had possession of his phone immediately after the shooting, as it is undisputed he called his brother to pick him up at a gas station.

{¶63} Hence, the sole direct evidence of record that Appellant fled the scene is the presence of his DNA on one of the shell casings found at the scene. The state

theorized at trial that Appellant and Ray were riding in the Ford Focus that pulled in front of Morris' vehicle. Sensing danger, Morris pulled out his gun. However, he was only able to fire one shot and was overpowered by Appellant and Ray, who surrounded his vehicle in a 360 degree manner, as evidenced by the fact that there are bullet holes at almost every angle of Morris' vehicle. As gunfire ringed Morris' car, neither Morris nor Blair were able to attempt to escape or duck. Both Morris and Blair were in an upright position and sitting in their respective seats when officers arrived at the scene. More significantly, investigators found two different types of ammunition, in addition to the one casing that came from Morris' firearm, scattered at the scene.

{¶64} The state theorized that Appellant and Ray abandoned their firearms in an unknown location after fleeing the crime scene. To support this theory, the state produced a Facebook message from Appellant to a person named "Bam Ysn" asking "[a]ye, you still got them poles?" (Trial Tr., p. 946.) According to Det. Lambert, "poles" is slang for firearms. Bam replied, "[w]hy? Wassup?" The records then reveal there was a call from Appellant to Bam. Subsequently, Appellant sent Bam a message stating "I wanna buy them." (Trial Tr., p. 946.) The state's theory was that Appellant was in the process of buying new guns after getting rid of the firearms used in the shooting.

{¶65} Although the evidence of Appellant's flight is significantly less than that of his codefendant Ray, who admitted to being present at the scene, Appellant's DNA was found at the scene. Appellant, himself, was gone when the police arrived mere minutes after the shooting. Evidence shows Appellant made a phone call on the west side somewhat later, presumably to create an alibi. Thus, the proof supporting a flight instruction appears to be that Appellant was at the scene at the time of the shooting

evidenced by his DNA found on ammunition at the scene and Appellant was not found by police who arrived almost immediately after. Evidence shows there were two shooters involved (besides Morris). The Ford found at the scene belonged to Appellant's girlfriend, who had loaned it to Appellant and Ray earlier that day. While not the strongest evidence, taken together this is enough to support the trial court's statement that there was evidence of flight presented at trial regarding both defendants. Appellant's second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

APPELLANT'S CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶66} Lastly, Appellant challenges the manifest weight of the evidence presented at trial. He urges that no one witnessed him at the scene, and challenges the value of the DNA evidence, which he contends is the only evidence placing him at the scene.

{¶67} In response, the state cites to text and Facebook messages sent by Appellant discussing the "hit" ordered on the victim, a desire to obtain firearms and ammunition, and a "job" he had secured that would pay ten thousand dollars. He told his mother in a jailhouse call he wanted her to pick up five thousand dollars someone owed him. The state also raises messages involving Appellant's codefendant confirming a hit was requested and later indicating that the hit had been carried out. The state also cites to cell phone pings that place his co-conspirator at the scene, evidence that the two had been together in Appellant's girlfriend's car that was ultimately left at the scene, and that his DNA was found on shell casings at the scene.

{¶68} Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." (Emphasis deleted.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). It is not a question of mathematics, but depends on the effect of the evidence in inducing belief. *Id.* Weight of the evidence involves the state's burden of persuasion. *Id*. at 390, 678 N.E.2d 541 (Cook, J. concurring). The appellate court reviews 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins*, at 387, 678 N.E.3d 541, 678 N.E.2d 541. This discretionary power of the appellate court to reverse a conviction is to be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id*.

{¶69} "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact is in the best position to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). The jurors are free to believe some, all, or none of each witness' testimony and they may separate the credible parts of the testimony from the incredible parts. *State v. Barnhart*, 7th Dist. Jefferson No. 09 JE 15, 2010-Ohio-3282, ¶ 42, citing *State v. Mastel*, 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971). When the record

contains two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, we will not choose which one is more credible. *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶70} Appellant challenges only the jurors' determination that he was involved in the shooting, and does not contest any other element. While the evidence is certainly more direct against Appellant's codefendant Ray, there is significant evidence in this record implicating Appellant in the shooting to support the jury's determination in this regard.

{¶71} The most significant evidence against Appellant was the presence of his DNA on a shell casing found at the scene. The evidence obtained from the crime scene strongly suggests that two shooters were involved in the murders, as two types of ammunition, (aside from the victim's single shot) were found at the scene. DNA that implicated Appellant was found on one of the .9mm shell casings. Appellant argues that DNA testing was only completed as to the major contributor of a mixed DNA sample. While testing on that profile included him as a contributor, there was a statistical likelihood of only 1 in 8,000 that this DNA belongs to him. Appellant also argues that as he and Ray are cousins, without testing Ray's DNA there is a strong possibility that Ray may also be included as a contributor to the DNA on the casing, as familial DNA tends to be similar.

{¶72} Beginning with the statistical likelihood issue, the jury was made aware through defense counsel's cross-examination of Andrew Sawin (BCI DNA analyst) that 1 in 8,000 is a very low statistical likelihood for DNA purposes. In contrast, Morris' DNA, which was found on the .45mm bullet, showed a statistical likelihood of 1 in 1 trillion. The jury was in full possession of all of the DNA evidence, including the statistical data. With

this understanding, it made its determination that Appellant was one of the shooters. Of course, the record is silent whether or to what extent they considered this evidence at all. Even if the DNA evidence played a large role in conviction, based on the evidence as a whole, there is support on the record for the decision to convict, here.

{¶73} As to the familial match, Sawin testified that he would have tested Ray's DNA if he had known that the two defendants were related, but stated that his ultimate conclusion likely would have not changed even if Ray's DNA had been tested. We note that there was testimony Ray was jailed at the time the DNA was tested. This is significant, as the main reason Appellant's DNA was tested was that CODIS indicated Appellant as a match to the bullet's DNA. Appellant's DNA was already on file in the CODIS system from his intake when he was jailed. Ray's DNA should likewise, then, have been on file in the system, but CODIS did not report such a match. (Trial Tr., p. 803.)

{¶74} This Court has previously affirmed convictions based on a single piece of identifying evidence. See *State v. Ferrara*, 2015-Ohio-3822, 42 N.E.3d 224 (7th Dist.) (three thirty-nine-year old fingerprints found near a garage door that was used to gain entrance into the victim's house were sufficient to support a conviction for murder.); *State v. Fuller*, 7th Dist. Belmont No. 14 BE 0016, 2016-Ohio-4796 (a single hair that matched the appellant's DNA profile and was found underneath the victim's body was sufficient to support a conviction in an aggravated murder case.); *State v. Boyd*, 7th Dist. Columbiana No. 19 CO 0007, 2020-Ohio-812 (a single pill bottle removed by a robber with his fingerprint found on the bottle along the path of his flight was sufficient to support a conviction).

{¶75} While all of the cases cited above were affirmed on DNA evidence alone, the jury here was provided with more than just the DNA evidence. Appellant's behavior prior to and after the shooting are at least as incriminating as the DNA found at the scene.

{¶76} As earlier discussed, on October 31, 2018, Appellant exchanged messages with a person named "Bossman Young." These messages were offered by the state to show that Appellant intended to travel to Youngstown with guns. (Trial Tr., p. 953.)

{¶77} On November 1, 2018, Appellant exchanged messages with a man named Demetrius Dawson. The messages and police testimony about the messages were offered to show Appellant was attempting to contact the person who put out the hit on Morris and that Appellant was seeking ammunition in connection with this hit. (Trial Tr., p. 960.)

{¶78} On November 4, 2018, Appellant's codefendant, Ray, messaged Johnson/Benson. While Appellant was not the author of these messages, the state's theory of the case was that Appellant and Ray intended to accept the job to kill Morris if the job was still available. (Trial Tr., pp. 963-964.)

{¶79} On November 6, 2018, Appellant exchanged messages with a person named Chiana Sharpe. Appellant's message to Chiana sought to have her take Appellant "east" because he had a job that would pay ten thousand dollars. (Trial Tr., p. 954.) This evidence was used to support the theory that Appellant and Ray were planning to carry out the "hit" and receive the payment offered for completion.

{¶80} Ten minutes after the shooting, codefendant Ray messaged Johnson/Benson that the hit had been completed and that Johnson/Benson needed to call him. (Trial Tr., pp. 964-965.)

{¶81} Again, while this text did not come directly from Appellant, it was used to help show that he and Ray planned, executed, and were trying to collect on the hit. It also indicated that the target of this murder for hire (Morris) had been killed.

{¶82} While Appellant was incarcerated awaiting trial, he made calls to his mother telling her to phone an unnamed person and arrange to have the five thousand dollars this person owed him picked up. Five thousand dollars is one-half of the amount offered in exchange for killing Morris. The number provided to Appellant's mother was the number of Johnson/Benson's phone.

{¶83} Appellant contends that police should have investigated the owner of the house near the shooting, as testimony was produced that the house was known as a drug house, the owner was arrested the day after the shooting, and was armed with a 9mm firearm. This record shows that testimony was produced that the gun possessed by the owner of the house did not match the weapons used during the shooting, and there was no evidence linking that man to the shooting.

{¶84} While there is no question that this case was built on circumstantial evidence, "[c]ircumstantial evidence and direct evidence inherently possess the same probative value." *State v. Prieto*, 7th Dist. Mahoning No. 15 MA 0200, 2016-Ohio-8480, 82 N.E.3d 450, ¶ 34, citing *In re Washington*, 81 Ohio St.3d 337, 340, 691 N.E.2d 285 (1998); *State v. Jenks*, 61 Ohio St.3d 259, 272-273, 574 N.E.2d 492 (1991), paragraph one of the syllabus. In fact, "[e]vidence supporting the verdict may be found solely through circumstantial evidence." *State v. Smith*, 7th Dist. Belmont No. 06 BE 22, 2008-Ohio-1670, ¶ 49.

{¶85} As such, Appellant's third assignment of error is also without merit and is overruled.

Conclusion

{¶86} Appellant challenges the admission of several photographs he describes as gruesome, a flight instruction given to the jury, and argues that his convictions are against the manifest weight of the evidence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

D'Apolito, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.