[Cite as *State v. Ray*, 2023-Ohio-2375.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TAQUASHON RAY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0026

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

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 Chief Prosecuting Attorney, Criminal Division, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee

Atty. Edward F. Borkowski, Jr., P.O. Box 609151, Cleveland, Ohio 44109, for Defendant-Appellant

Dated: June 30, 2023

WAITE, J.

{¶1} Appellant Taquashon Ray 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 argues that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. Appellant also argues that the trial court erroneously permitted the state to join his codefendant, Shaiquan Sharpe, in the same trial and erred in imposing consecutive sentences. 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. Shainquon Sharpe* (22 MA 0021). Appellant and Sharpe were codefendants in this matter and were tried jointly. This case only concerns Appellant's conviction and sentence.

{¶3} The incident at issue stemmed from an act of retaliation related to a prior drug deal. In that prior criminal act, one of the victims in this matter, Edward Morris, allegedly shot a man named Brian Benson during the drug-deal-turned-robbery. According to the state, Benson decided to wait for tensions to cool before he retaliated against Morris by putting out a request for a "hit" on Morris. Appellant and Sharpe were apparently staying in the Columbus area and learned that Benson was looking for someone to kill Morris for him. (Trial Tr., p. 722.) 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 record is somewhat muddled and confusing in this

regard, as 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.

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

> [Sharpe] Bet I won't be in Youngstown till 7. * * *
>
> [Young] Okay. When you coming back? * * *
>
> [Sharpe] 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, Sharpe exchanged messages with a man named Demetrius Dawson. As the record reflects only Sharpe's side of the conversation, Dawson's messages are unknown. Similar to Young, there is no further information or description of Dawson within the record.

> [Sharpe] 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.)

{¶6} Again, the state's theory is that this message was to further the killing, as it reflects an attempt to contact the person ordering the hit and an attempt to obtain ammunition.

{¶7} On November 4, 2018, Appellant messaged Johnson/Benson:

> [Appellant] 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. * * *
>
> [Appellant] 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.)

{¶8} On November 6, 2018, Sharpe 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 Sharpe were offered by the state as evidence that the two men both actively sought to accept and carry out the hit together.

{¶9} 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.

{¶10} 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.

{¶11} 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 gunshots wounds and significant bleeding. Patrolman Wess noticed a gun on his 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.

{¶12} 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 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.

{¶13} 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.

{¶14} Ten minutes after the shooting, Appellant messaged Johnson/Benson:

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

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

{¶15} 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.

{¶16} According to Douglas, she had just begun dating Sharpe, whom she referred to as "Mann Mann." On the day of the shooting, she had picked up Sharpe earlier in the day and they went to a Taco Bell. While there, Sharpe texted someone named "Little" and told Douglas that they needed to pick him up at Wick Park. At trial, Douglas identified Appellant 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, Sharpe informed Douglas that her car was parked on Pasadena and she would not be getting it back any time soon. He did not explain why but urged her to stay away from the Pasadena area.

{¶17} When police interviewed Sharpe, he informed Detective Ronald Barber, Jr., that Appellant 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 northwest side of Youngstown.

{¶18} Appellant 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 gun fire and ducked down inside of 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.

{¶19} 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 Sharpe to the DNA found at the scene. When they learned of this alert, police obtained a warrant for a DNA sample from Sharpe. Testing showed Sharpe was a likely contributor of the DNA on the casing. Appellant had agreed to submit a DNA sample before he learned of the DNA on the shell casing. However, as the only usable DNA had included Sharpe, investigators saw no need to obtain Appellant's sample.

{¶20} Cell phone records were admitted to show various text messages and calls by the pair. The records were also admitted to show that Appellant'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 Appellant traveled from the north side of Youngstown to the scene. One minute after the shooting, the outer perimeter of a circle marking his location on a map included the sidewalk in front of the scene of the shooting. The towers showed him then travelling northwest of the scene until Sharpe used Appellant's phone in an area located on the west side to call to Douglas.

{¶21} An autopsy revealed that 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.

{¶22} Appellant and Sharpe were charged in a single indictment with nine counts pertaining to both defendants, one pertaining solely to Appellant, and one solely attributed to Sharpe. 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 having weapons while under a disability, a felony of the third degree in violation of R.C. 2923.13(A)(3)(B) with an attenuated firearm specification.

{¶23} On January 11, 2021, Appellant filed several motions, including a motion to sever the trial. Although the court initially granted this motion, the state later filed a motion for reconsideration of this issue which the court granted.

{¶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

Appellant's Convictions Were Against the Manifest Weight of the Evidence.

ASSIGNMENT OF ERROR NO. 2

Appellant's Convictions Were Unsupported by Sufficient Evidence.

{¶25} In his first two assignments of error, Appellant relies on essentially the same arguments in contending that his convictions are against the manifest weight of the evidence and are not supported by sufficient evidence. In both, Appellant solely attacks the question of the identity of the perpetrator and does not contest any other element. He argues that the investigation was deficient, incomplete, and that there was no direct evidence linking him to the crime. Appellant argues that law enforcement made no attempt to obtain his DNA even though he made himself available for such purpose, did not retrieve fingerprints at the scene, did not test any of the phones, and failed to investigate whether a resident at a nearby house could have been responsible for the shooting. Appellant also cites to evidence that Sharpe used Appellant's phone to call Michelle Douglas the night of the shooting and alleges that in November of 2018, someone used Appellant's Facebook account while Appellant was jailed. Thus, Appellant claims the messages relied on by the state may not have come from him.

{¶26} In response, the state argues that Appellant admitted he was at the scene at the time of the shooting, and that he fled. The state also cites evidence showing an overarching plan that began when Johnson/Benson offered ten thousand dollars for someone to kill Morris. The states asserts that in text and Facebook messages from Appellant's account he asked Johnson/Benson if he still sought a hit on Morris. In addition, Appellant sent Johnson/Benson two messages fifteen minutes after the shooting saying "check and mate" and "job done." (Trial Tr., pp. 964-965.)

{¶27} "Sufficiency of the evidence is a legal question dealing with adequacy." *State v. Pepin-McCaffrey*, 186 Ohio App.3d 548, 2010-Ohio-617, 929 N.E.2d 476, ¶ 49 (7th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

"Sufficiency is a term of art meaning that legal standard which is applied to determine whether a case may go to the jury or whether evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Draper*, 7th Dist. Jefferson No. 07 JE 45, 2009-Ohio-1023, ¶ 14, citing *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955). When reviewing a conviction for sufficiency of the evidence, a reviewing court does not determine "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Rucci*, 7th Dist. Mahoning No. 13 MA 34, 2015-Ohio-1882, ¶ 14, citing *State v. Merritt*, 7th Dist. Mahoning No. 09-JE-26, 2011-Ohio-1468, ¶ 34.

{¶28} In reviewing a sufficiency of the evidence argument, the evidence and all rational inferences are evaluated in the light most favorable to the prosecution. *State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998). A conviction cannot be reversed on the grounds of sufficiency unless the reviewing court determines no rational juror could have found the elements of the offense proven beyond a reasonable doubt. *Id*.

{¶29} 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. Lan*g, 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*.

{¶30} "[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).

{¶31} 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 presents 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).

{¶32} Appellant challenges only the jury's determination that he was involved in the shooting and does not contest any other element of the crimes. This record reveals this case was built largely on circumstantial evidence, however, unlike his codefendant, investigators were able to place Appellant at the scene of the crime at the moment the shooting occurred.

{¶33} The state's theory of the case was that Appellant and his codefendant were involved in a scheme to carry out a murder for hire, or a "hit," on Morris. The hit was ordered by Johnson/Benson and investigators were able to present evidence at trial showing the steps taken by Appellant and his codefendant to carry out this killing.

{¶34} On November 4, 2018, Appellant messaged Johnson/Benson and appears to confirm the hit on Morris was still sought. (Trial Tr., pp. 963-964.)

{¶35} On November 6, 2018, Sharpe messaged 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. This evidence was used to support the theory that Appellant and Sharpe planned to carry out the "hit" and receive the $10,000 offered by Johnson/Benson.

{¶36} Ten minutes after the shooting, Appellant messaged Johnson/Benson:

> [Appellant] Check and mate. * * *
>
> * * *
>
> [Appellant] Job done.

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

{¶37} Investigators were also able to physically place Appellant at the crime scene at the time of the shooting. During Appellant's first interview with investigators, Appellant told them that he had no knowledge of the crime, that his car had broken down and he was forced to leave it on Pasadena Avenue before the shooting occurred. When Appellant was told that a witness saw a man running from the vehicle after the shooting,

he then admitted he was present during the shooting. He claimed that when he heard gunshots he ducked down and hid inside his vehicle. When the shots stopped, he attempted to drive away. The car would not start, however, so he got out and ran away on foot.

{¶38} There are several problems with Appellant's second version of the facts. The vehicle he claimed to be hiding in had sustained multiple bullet holes, but he claims he miraculously escaped unharmed. He never provided any description of the persons he alleged were actually the shooters and never called the police about the crime. He never explained the coincidence of being present at the scene of this shooting at the exact moment it was accomplished, after he had exchanged text messages regarding a hit on one of the victims. The record also reveals he had used Morris' first name in a text message to Johnson/Benson in discussing the proposed hit.

{¶39} Appellant argues that there is no evidence that the text messages are to be interpreted in the manner the state contended and that there is no evidence he actually sent those messages. Contrary to his contentions, read together the meaning of the messages appears clear. The messages do reflect a plan to kill Morris for money, and more than one message sent from phones owned by Appellant and Sharpe identified Morris by his first name. Further, Appellant's codefendant Sharpe phoned his mother from jail and asked her to call a number that belonged to Johnson/Benson. In the recorded call, Sharpe asked his mother to arrange for someone she trusted to pick up his money from the person she was to call, and who he would not identify by name. He told his mother that he was owed $5,000. Five thousand dollars is half of the amount Appellant and his codefendant were promised for carrying out the killing.

{¶40} Appellant implies the identity of the person who sent the message from his phone is in question. However, he admitted the phone belonged to him. The jury could presume he sent those text messages absent evidence clearly to the contrary. While Appellant alleges there was a period of time when he was incarcerated in 2018 that someone else used his Facebook account, there is evidence his passwords were later changed with no further problem. We note that most of the incriminating messages were in the form of text messages, not Facebook messages. Further, while Appellant claims that someone may have been using his phone the night of the shooting, he admits that he called his brother immediately after the shooting to pick him up at a gas station. Hence, the record contains unrefuted evidence that Appellant's phone was in his possession at least on the day of the crime. The text messages stating "check mate" and "job done" were sent ten minutes after the shooting. In addition, cell phone tower pings place Appellant's phone at the scene of the shooting and subsequent tracking follows a path similar to the one Appellant described he used to flee the scene.

{¶41} Appellant also complains that police did not investigate the owner of the house located near the shooting. Testimony was produced that the house was known as a drug house and that the owner was arrested the day after the shooting and was armed with a 9mm firearm. However, testimony was also introduced that the gun did not match any of the weapons used to kill the victims in this case and there was no evidence linking that man to this shooting or these victims.

{¶42} Appellant contends that there is no evidence that he knew Morris. However, a text message sent from his phone to Johnson/Benson stated: "Shit you still want Ed or naw?" Morris' first name is Edward. This is no indication that this text message was sent

by anyone other than Appellant. Whether or not Appellant was personally acquainted with Morris, Appellant clearly knew he intended to accept an offer to kill Morris for money if the offer was still available.

{¶43} While there is no question that the 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, ¶ 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.

{¶44} As such, Appellant's first and second assignments of error are without merit and are overruled.

ASSIGNMENT OF ERROR NO. 3

The Trial Court Erred by Granting the State's Motion to Reconsider Joinder After First Granting Appellant's Motion to Sever.

{¶45} Appellant challenges the trial court's actions in initially granting his motion to sever the trials of he and his codefendant, but later granting the state's motion and reconsidering that decision. Appellant argues that joinder of the two trials was problematic, alleging that he and his codefendant essentially blamed each other and presented "different and mutually incompatible defenses." Appellant also complains that he could not cross-examine his codefendant Sharpe, who implicated Appellant in the murder, because he elected not to testify.

{¶46} The state rebuts Appellant's claim that law enforcement first learned of Appellant's involvement in the crime after Sharpe implicated him. The state contends that other witnesses had mentioned Appellant's possible involvement prior to Sharpe. Regardless, Appellant conceded that he was at the scene of this crime at the time of the shooting and the argument that Sharpe implicated him cannot possibly have prejudiced Appellant.

{¶47} Pursuant to Crim.R. 8(B):

> Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

{¶48} Under Crim.R. 14, if it appears that a defendant is prejudiced by joinder of a codefendant, the trial court may grant a motion for severance. However, the burden is on the defendant to prove that joinder is prejudicial. *State v. Kozic*, 7th Dist. Mahoning No. 11 MA 160, 2014-Ohio-3788, ¶ 69. "The test is 'whether a joint trial is so manifestly prejudicial that the trial judge is required to exercise his or her discretion in only one way--by severing the trial. * * * A defendant must show clear, manifest and undue prejudice and violation of a substantive right resulting from failure to sever." *State v. Schiebel*, 55 Ohio St.3d 71, 89, 564 N.E.2d 54 (1990), citing *United States v. Castro*, 887 F.2d 988, 998 (9th Cir.1989).

{¶49} An appellate court reviews a trial court's denial of a motion for severance for an abuse of discretion. *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). Abuse of discretion involves more than an error or judgment. It implies that the court's determination was unreasonable, arbitrary or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶50} Appellant, then, holds the burden of "affirmatively showing that his rights were prejudiced" and that the trial court abused its discretion in failing to sever the trials. *State v. Torres*, 66 Ohio St.2d 340, 421 N.E.2d 1288 (1981), syllabus. Appellant first asserts that his inability to cross-examine Sharpe, who chose not to testify, prejudiced his case. However, as this Court has already recognized, such an argument is speculative at best, as Sharpe would have been free to assert his Fifth Amendment right even if the trials were severed. See *State v. Bright*, 7th Dist. Mahoning No. 14 MA 0058, 2016-Ohio-6973, ¶ 18. There is no evidence that at a separate trial where Sharpe would have been a witness he would have implicated himself and exculpated Appellant, as doing so would clearly have an adverse effect on his own criminal trial, where he faced life in prison.

{¶51} Appellant next argues that he and Sharpe had incompatible defenses and that they essentially pointed the finger at the other, thus forcing Appellant to deal with "an extra prosecutor." However, the record does not support Appellant's contention. For the most part, the defenses of both Appellant and Sharpe were very similar. Both argued that Appellant drove the Ford Focus to Pasadena Avenue without Sharpe and that Appellant happened to arrive at the scene at the wrong time. Both contended they were innocent of the alleged crimes and of planning the hit. The only "finger pointing" occurred when Sharpe's counsel argued that the familial relationship between Sharpe and

Appellant (they were allegedly cousins) could have affected the DNA results implicating Sharpe. However, based on a prior incarceration Sharpe's DNA produced a CODIS alert that Sharpe was likely a match to DNA found on a piece of evidence at the scene. Evidence showed that Appellant had also been incarcerated and his DNA would likely also have been in the CODIS system. Yet, there was no alert to Appellant when the DNA on the evidence was tested. Thus, Sharpe's attempt to cast doubt on the DNA evidence linking him to the crime by raising the familial connection with Appellant does not appear likely to have impacted any aspect of Appellant's defense.

{¶52} Lastly, Appellant cites to the jailhouse call where Sharpe gave his mother Johnson/Benson's phone number and asked her to collect $5,000 that Johnson/Benson owed to him. Although this evidence may have been damaging to Appellant, significant evidence was presented involving texts between Appellant and Johnson/Benson regarding the planned hit. The evidence that Sharpe asked his mother to retrieve his half of the money for completing the killing was a relatively minor piece of corroborating evidence considering the amount of evidence offered against Appellant, directly. The phone call evidence cannot, in isolation, be seen as prejudicial.

{¶53} Accordingly, the trial court did not err in joining the trials of the two codefendants in this matter. Appellant's third assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 4

Appellant's Sentence is Contrary to Law Because the Record Does Not Support the Imposition of Consecutive Sentences.

{¶54} Appellant concedes that the trial court made the relevant findings necessary to order consecutive sentences, but argues that the record does not support those findings. He begins by again attacking the evidence of his involvement in the shootings and his subsequent convictions. Appellant raises the fact of his relative youth (he was twenty-five at the time of sentencing), and his limited criminal record, and contends that even if he participated in the hit, no one would expect to find three people in the vehicle when they were expecting only Morris.

{¶55} The state counters by noting the seriousness of the crime, which involved the aggravated murder of three victims, including an infant. The state also points out that Appellant concedes he had previously been convicted of and sentenced for two other felonies.

{¶56} Pursuant to R.C. 2929.14(C)(4), before a trial court can impose consecutive sentences on a defendant, the court must find:

> [T]hat the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶57} A trial court must make the relevant consecutive sentence findings at the sentencing hearing and must additionally incorporate these findings into the sentencing entry. *State v. Williams*, 2015-Ohio-4100, 43 N.E.3d 797, 806, ¶ 33-34 (7th Dist.), citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The court is not required to state reasons in support nor is it required to use any "magic" or "talismanic" words, so long as it is apparent that the court conducted the proper analysis. *Williams* at ¶ 34, citing *State v. Jones*, 7th Dist. Mahoning No. 13 MA 101, 2014-Ohio-2248, ¶ 6; *State v. Verity*, 7th Dist. Mahoning No. 12 MA 139, 2013-Ohio-1158, ¶ 28-29.

{¶58} The Ohio Supreme Court has recently readdressed the manner in which we review consecutive sentences. *State v. Gwynne*, -- Ohio St. 3d --, 2022-Ohio-4607, -- N.E.3d --. As to the standard of review, the *Gwynne* Court held that:

> [T]he evidentiary standard for changing the trial court's order of consecutive sentences is not deference to the trial court; the evidentiary standard is that the appellate court, upon a de novo review of the record and the findings,

> has a "firm belief" or "conviction" that the findings -- the criteria mandated by the legislature to be met before the exception to concurrent sentences can apply -- are not supported by the evidence in the record.

Id. at ¶ 23, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22; see also *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954).

{¶59} "R.C. 2953.08(G)(2) does not require the high level of deference that comes with an abuse-of-discretion standard of review. This type of deference would permit a court of appeals to modify a defendant's sentence or to vacate the sentence and remand only when no sound reasoning process can be said to support the decision, or where the trial court exhibited an arbitrary or unconscionable attitude when it imposed the consecutive sentences." *Gwynne* at ¶ 19, citing *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990); *Huffman v. Hair Surgeon, Inc*., 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985).

{¶60} The Court then provided "practical guidance on consecutive-sentence review." *Gwynne* at ¶ 24. The court explained that a consecutive sentence review is two-fold: first, whether the record contains the requisite R.C. 2929.14(C) findings. *Id*. at ¶ 25. Second, "[i]f the appellate court determines that the R.C. 2929.14(C)(4) consecutive-sentence findings have been made, the appellate court may then determine whether the record clearly and convincingly supports those findings." *Id*. at ¶ 26. "The point here is that if even one of the consecutive-sentence findings is found not to be supported by the record under the clear-and-convincing standard provided by R.C. 2953.08(G)(2), then the trial court's order of consecutive sentences must be either modified or vacated by the appellate court." *Id*., citing R.C. 2953.08(G)(2).

{¶61} "When reviewing the record under the clear-and-convincing standard, the first core requirement is that there be some evidentiary support in the record for the consecutive-sentence findings that the trial court made." *Id*. at ¶ 28. "The second requirement is that whatever evidentiary basis there is, that it be adequate to fully support the trial court's consecutive-sentence findings. This requires the appellate court to focus on both the quantity and quality of the evidence in the record that either supports or contradicts the consecutive-sentence findings." *Id*. at ¶ 29. *Gwynne* was released after briefing concluded in this matter, thus the parties do not cite *Gwynne* or apply its law.

{¶62} The trial court in this matter specifically found that at least two of the offenses were committed as part of a course of conduct and that the harm caused was so great or unusual that no single term could adequately reflect the seriousness of the conduct. (Sentencing Hrg., p. 27.)

{¶63} Here, the conduct was shown to be a series of events that began when Morris shot Johnson/Benson and ended when Appellant and Sharpe carried out a hit on Morris ordered by Johnson/Benson. Ultimately, three murders were involved. Appellant relies heavily on the fact that, although he does not concede he participated in the shooting, a shooter would have had no reason to believe that two other individuals were inside the car with Morris. Whether Appellant and Sharpe knew how many people were in the car appears to be irrelevant, as the record shows they approached the vehicle with, at best, careless disregard for the persons inside while they fired at the car in a circular 360 degree manner, evidenced by several bullet holes through each of the doors.

{¶64} Appellant claims that he does not have a significant criminal record but concedes that at age twenty-five, he has already been convicted of two felonies and was

sentenced to prison. Appellant stresses his young age, however, the court's focus was on the heinousness of the conduct and the need to protect society, and it was not error for the court to choose to focus on those factors. The evidence demonstrates a complete disregard for life, as the facts portray Appellant engaged in a violent killing for hire. Hence, Appellant's fourth assignment of error is without merit and is overruled.

Conclusion

{¶65} Appellant argues that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. Appellant also argues that the trial court erroneously permitted the state to join his codefendant, Shainquon Sharpe, in the same trial and erred in imposing consecutive sentences. 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.