[Cite as *State v. Williams*, 2019-Ohio-4105.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 27919
	:	
v.	:	Trial Court Case No. 2017-CR-2793
	:	
DEMETRIUS WILLIAMS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 4th day of October, 2019.

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FROELICH, J.

{¶ 1} A Montgomery County jury found Demetrius Williams guilty of six offenses, including two counts of murder, as well as firearm specifications accompanying all six counts. In addition, the trial court found Williams guilty of having weapons under disability. After merging various counts, the court sentenced Williams to 15 years to life on the Count Three murder and eight years on the Count Six felonious assault, plus three years on the firearm specification to each of those two counts, all to run consecutively. In addition, the trial court sentenced Williams to three years on the Count Seven weapons under disability, to run concurrent with the other sentences, for an aggregate term of 29 years to life. Williams appeals from that judgment. The judgment of the trial court will be affirmed.

Factual and Procedural Background

{¶ 2} In the early hours of September 4, 2017, 20-year-old Pierre Jackson was shot and killed in the parking lot of the Plush Gentlemen's Club ("Plush") in Harrison Township. Jackson's cousin, Rino Lattimore, was shot multiple times during the same incident. Josh Newsome and Alex Hernandez, two security guards present at Plush that morning, detained Williams until law enforcement officers arrived and arrested him.

{¶ 3} Williams was indicted on seven charges: Counts One and Three, murder (proximate result) in violation of R.C. 2903.02(B), unclassified felonies (both related to Jackson's death); Counts Two and Five, felonious assault (deadly weapon) in violation of R.C. 2903.11(A)(2), second-degree felonies (Count Two related to Jackson's shooting, Count Five to Lattimore's); Counts Four and Six, felonious assault (serious physical harm) in violation of R.C. 2903.11(A)(1), second-degree felonies (Count Three related to

Jackson's shooting, Count Six to Lattimore's); and Count Seven, having weapons under disability (prior drug conviction) in violation of R.C. 2923.13(A)(3), a third-degree felony. Counts One through Six also carried firearm specifications. Williams pled not guilty to all charges.

{¶ 4} At Williams's jury trial, shooting victim Lattimore testified that on the night of September 3, 2017, he and Jackson arranged to meet at a bar in Cincinnati, where both lived. Inside the bar, Lattimore encountered Williams, who was with his (Williams's) girlfriend, "Q" (Shaquina Ray), and "Self" (Eric Jones),[1] another acquaintance of Lattimore's. According to Lattimore, he and Williams had been friends for over 25 years, and Lattimore had lived with Williams's family when he and Williams were young. The five (Lattimore, Jackson, Williams, "Q," and "Self") had drinks together at the Cincinnati bar. When Lattimore informed Williams that he (Lattimore) and Jackson were headed to a rap concert in Dayton, Williams said that his group would go there as well.

{¶ 5} Lattimore and Jackson then walked to Lattimore's Toyota Camry, while Williams, "Q," and "Self" went to Williams's Mercedes Benz. Lattimore testified he pulled alongside Williams's car, where Williams "showed me his pistol," saying "I'm strapped;" Lattimore explained that "strapped" meant Williams had a gun. Lattimore described the pistol as "a little red gun." He said he told Williams that was a "girl gun," and Williams "just laughed and then he showed me another gun" he pulled from the back of his car. Lattimore described the second gun as "a 22" that resembled "[a] little machine gun." Lattimore said he had seen Williams with both guns before, and that Williams regularly

[1] Defense counsel and a law enforcement witness later provided the real names of "Q" and "Self." (See Tr. p. 420, 705).

carried the red pistol. Lattimore identified State's Exhibits 16 and 70 as Williams's red pistol and .22 caliber rifle, respectively.

{¶ 6} Both groups then drove to Dayton. Lattimore testified that all five stopped at an unspecified bar and shared drinks together before heading in the same two cars to Cognacs, the club where the concert was to occur. At Cognacs, Lattimore saw Kenneth Vaughn, another acquaintance, seated with "his guys" in the "VIP" section. He said Williams, "Q," and "Self" joined Vaughn in the VIP area, while Lattimore and Jackson remained in the area for the general public, where a female friend of Lattimore's later joined them. Lattimore said Jackson had been drinking Patrón all night, but by this time, Lattimore had switched to smoking marijuana. At one point, Jackson interrupted the rapper on stage by yelling over the music, but the concert resumed with little disruption. Sometime later, the group all agreed to continue on to Plush, with Lattimore's female friend leaving in her own car, Lattimore and Jackson going in Lattimore's Toyota, and Williams, "Q," and "Self" following in Williams's Mercedes. Lattimore testified that Jackson, who was "drunk" by this time, reclined his car seat and said "he was going to go to sleep."

{¶ 7} When the group arrived at Plush, Lattimore parked his Toyota in a grassy area of the parking lot, and Williams parked his Mercedes directly next to Lattimore's Toyota. Lattimore exited his car and leaned against the driver's side of the Mercedes while talking on his cell phone; Jackson remained in Lattimore's car. Lattimore testified that he then heard a shot, felt his "whole body just * * * rock[ ]," and turned to see Williams shooting at him while standing in front of the Mercedes with the red gun in his hand. Lattimore said he was hit three times before he "took off running."

{¶ 8} Lattimore testified that he was hit two more times while running toward a tree, with Williams "limping"[2] after him and continuing to shoot. Once Lattimore reached the tree and fell to the grass behind it, police had arrived and surrounded him with flashlights and guns drawn. When he told them that he had been shot by Williams, an officer rolled Lattimore over and confirmed that he had "multiple" wounds. Lattimore said he briefly lost consciousness, but came to and asked his friend to call Williams's mother, because "[t]hat's like my mother" and he wanted her to know that Williams had shot him. He then tried to call his own mother before reaching Beverly Turner, the mother of his child.

{¶ 9} Lattimore denied that he had a gun that night. He said he was transported to the hospital with five gunshot wounds, including two to the opposite sides of his ribs, one in his thigh, and two in his shoulder. Lattimore said the bullets to his shoulder broke bones and "messed up" his deltoid muscle, leaving him unable to lift his arm or to work. He said he also now walks with a slight limp. Lattimore identified Williams as the man who shot him. On cross-examination, Lattimore admitted that he did not see who shot Jackson; only later did he learn that Jackson had been killed. He also admitted that he initially believed that "Self" must have shot Jackson.

{¶ 10} Deputy Joseph Schwieterman of the Montgomery County Sheriff's Office testified that he was dispatched to Plush at about 3:15 a.m. on September 4, 2017, in response to a reported shooting. Other officers in other vehicles arrived at the scene at about the same time. Deputy Schwieterman ran to an individual lying face up on the ground in front of a Toyota Camry at the south side of the parking lot. That man (Jackson) "appeared to be lifeless," and Deputy Schwieterman was unable to detect a pulse. When

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[2] Lattimore explained that Williams walks with a limp.

medics arrived to tend to that man, a security guard[3] approached Deputy Schwieterman and handed him a Springfield Armory pistol that the guard said had been taken from a man who tried to enter a Chevrolet Traverse[4] parked at Plush. Alex Hernandez, a Plush security guard, then handed Deputy Schwieterman a second pistol, "silver on top and red on bottom." Deputy Schwieterman said he secured both guns in the trunk of a police cruiser at the scene.

{¶ 11} Hernandez and Josh Newsome, another Plush security guard, had Williams on the ground between the Toyota Camry and a Mercedes Benz. A female whose last name was Ray (i.e., "Q") also was being detained by the security guards, and Deputy Schwieterman transported her to the Sheriff's office headquarters to be interviewed by Detective Kellar. Deputy Schwieterman then returned to the scene to drop off two other female witnesses who already had been interviewed.

{¶ 12} Deputy Craig Stone of the sheriff's office testified that he was dispatched to Plush later on the morning of September 4 to act as an evidence technician. Deputy Stone said he took photographs and collected three firearms that had been secured by other deputies before he arrived. He identified those guns as a red 9 millimeter (State's Exhibit 16), a black Springfield .40 caliber (State's Exhibit 66), and a Beretta 9 millimeter (State's Exhibit 64). He also identified a fragmented bullet that he collected from beneath a car in the Plush parking lot (State's Exhibit 24). Deputy Stone said he found an additional 9 millimeter Smith and Wesson (State's Exhibit 68) in the glove box of a Mercedes at the scene and a Beretta .22 caliber "submachine gun[-]style" weapon (State's Exhibit 70) on

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[3] The record indicates that this security guard was named "Locker" [sic]. (Tr. p. 208).

[4] Deputy Schwieterman later identified that individual as Kenneth Vaughn. (Tr. p. 222).

the floor of that car's back seat. Deputy Stone testified that he lifted fingerprints from various locations on the Mercedes, and identified State's Exhibit 30 as a copy of the fingerprint card he prepared from those prints. He also said he collected DNA swabs from the guns and the interior and exterior of the Mercedes, and collected ammunition from each of the guns. Finally, Deputy Stone testified that he collected a DNA swab from Vaughn at the scene.

{¶ 13} Deputy Eric Bryan, another evidence technician with the sheriff's office, testified that he, too, was dispatched to the crime scene at Plush, arriving shortly after 3:15 a.m. on September 4. Deputy Bryan took a series of photographs, including some depicting a ball cap on the ground near some blood.[5] He collected the cap, three shell casings, and a fragment of a spent bullet found on the roof of car parked near the deceased victim (Jackson). Deputy Bryan identified photographs depicting where each of those items was found.

{¶ 14} Both Newsome and Hernandez testified as to what they observed at Plush on the morning of the shooting. Newsome said he had worked security at a different club the previous night, but headed to Plush after the other club closed in order to pay the security staff there. He arrived shortly before 3 a.m., and almost immediately noticed a car pull into the parking lot, "driving erratically."[6] As Newsome and other security guards began to approach that vehicle, Newsome heard gunshots behind him, and turned to see a man with a gun in his hands, shooting. Only then did Newsome notice another man on

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[5] Lattimore testified he was wearing a San Diego Chargers hat that fell from his head when he hit the ground; he identified State's Exhibit 35 as a photograph of that hat and Exhibit 39 as the hat itself.

[6] The "erratic" vehicle apparently was unrelated to the shooting. (*See* Tr. p. 749).

the ground. With the shooter headed in a different direction and continuing to fire, Newsome drew his own gun and ordered the shooter to drop his weapon. When the shooter's weapon "either jammed or ran out of ammunition," he (the shooter) ran toward Newsome and "tossed the firearm at me and it hit me in the leg." Newsome said he picked up the shooter's gun and holstered his own.

{¶ 15} Newsome testified that the shooter then headed toward a parked Mercedes and attempted to enter it. Newsome followed and "t[ook] him to the ground with my right arm." Newsome handed the shooter's gun to Hernandez and handcuffed the shooter, then stood over him until police arrived. Newsome directed officers to the body in front of the car and to the weapon taken from the shooter, which he described as "red or maroon with a silver slide." He identified State's Exhibit 16 as that gun, and Williams as the shooter.

{¶ 16} Hernandez testified that he began the night of September 3, 2017 working outside security at Cognacs. While there, he was summoned inside to help with a pending "altercation." Once inside, he observed Jackson in a verbal exchange with the performer, but no intervention was necessary. Hernandez watched Jackson walk to a car and leave shortly before Cognacs' 2:30 a.m. closing time. After closing, Hernandez headed to Plush, arriving for his shift there at about 3 a.m.

{¶ 17} About five minutes after Hernandez arrived, and before he entered the club, he saw a Mercedes pull into the parking lot, "driving recklessly."[7] As he, Newsome, and some other security guards started toward that vehicle, Hernandez "began hearing shots fired from * * * the side lot." After about three shots, he reached a corner of the building

[7] This was a different Mercedes than the one Williams drove. (*See* fn.6, above).

and "saw one male fall to the ground." Hernandez ran toward that man and checked for a pulse. Using his light, he noticed that the man's pupils did not dilate. Hernandez then saw "that he (Jackson) was bleeding out of his face and there was brain matter on his face." He recognized the man as the patron who confronted the performer at Cognacs earlier.

{¶ 18} As Hernandez was checking that victim, he saw in the middle of the road a bearded man "in a white shirt with red lettering" who appeared to be "clearing a jam out of his gun." Soon thereafter, Newsome handed Hernandez a gun. Hernandez placed that gun in his front pocket, then moved to a second shooting victim (Lattimore). Hernandez began to apply pressure to that man's wounds, and used his belt to place a tourniquet on the man's leg. Describing the man as "panicked" and "frantic," Hernandez testified that the man said, "Demetrius shot me, Demetrius shot me, call my mother." When police arrived, Hernandez handed the weapon he received from Newsome to an officer. He identified State's Exhibit 16 as that "small-framed pistol with a red handle."

{¶ 19} Kenneth Vaughn testified that he had known Lattimore since 2008 from having served time together in the Butler County jail; he said he had known Williams about the same length of time from "see[ing] him at clubs." Vaughn said that he was at a rap concert at Cognacs with his brothers and cousin on the night of September 3, 2017, and saw Lattimore, Jackson, Williams, and "Self" there. Vaughn said he assumed that they were together because he knew that they all were from Cincinnati. Vaughn said that Jackson "was getting drunk and [Lattimore] took the bottle from him."[8] Vaughn described Jackson as "hyped, like he was jumping up and down, like with the artist whoever [sic]

[8] Vaughn confirmed that Jackson was drinking alcohol directly from a bottle.

was rapping." Vaughn said Jackson also was "throwing the middle finger up to the dude who [was] rapping," causing Lattimore to try to "calm[ ] [Jackson] down" by pulling him aside. He said he did not witness any fighting at Cognacs. Lattimore, Jackson, and the rest of their group all left before Vaughn did.

{¶ 20} Vaughn said that when Cognacs closed that night, he, his girlfriend Keishawn Tims, and Tims's sister all proceeded to Plush in Tims's Chevy truck. Vaughn was driving, and he parked next to a Mercedes, then exited the truck and began talking to "Self," who was standing nearby. According to Vaughn, as the two women were getting out of Tims's truck, he "heard a bang" and turned his head to see "a gun * * * turned towards" Lattimore, firing in his direction. The shooter's back was toward Vaughn. Vaughn saw that Jackson had fallen to the ground in front of a car, then saw the shooter "shift" in Lattimore's direction, "chasing [Lattimore], shooting [Lattimore]." Vaughn said he and the two women ran behind the Chevy toward the highway, then ran back to the truck to try to drive away. As Vaughn attempted to get in the back seat, a security guard approached and had all three of them lie in the grass. Vaughn said there were two guns in the backseat of the Chevy, but he did not use either of them that night. He also said he did not see either Lattimore or Jackson with a gun that night. Vaughn identified Williams as the only person he saw fire a gun in the parking lot at Plush.

{¶ 21} Beverly Turner, Lattimore's girlfriend and the mother of his child, testified that Lattimore called her at about 3 a.m. on September 4, 2017, sounding "out of breath," "yelling," and "excited." According to Turner, Lattimore kept repeating, "baby, Demetrius just shot me four times." She said that when Lattimore stopped speaking, she continued to listen to what was going on, then picked up Lattimore's mother and drove to the hospital

in Dayton.

{¶ 22} The State also presented a series of expert witnesses. First, a latent print examiner from the Miami Valley Regional Crime Laboratory ("MVRCL") testified that fingerprints taken from the crime scene and labeled as State's Exhibit 30 matched Williams's fingerprints. None of those prints came from a firearm. Later, a forensic scientist from the serology/DNA section of the MVRCL testified that swabs for touch DNA taken from various guns seized at the scene of the Plush shooting yielded inconclusive results; neither the red pistol nor any other gun could be tied to Williams by DNA evidence.[9]

{¶ 23} The State also presented by DVD the deposition testimony of Russell Uptegrove, the forensic pathologist who conducted Jackson's autopsy. Uptegrove testified that Jackson died of homicide resulting from a single gunshot wound to the back of his head, with the bullet passing through and nearly severing his brain stem before lodging in his nasal cavity. Uptegrove said that although the bullet fragmented when it struck bone, he was able to remove the jacket and three small pieces of lead, which he identified as State's Exhibit 9. A forensic firearms examiner from the MVRCL then opined, based on her testing and examination, that three cartridge casings recovered from the crime scene outside Plush and the bullet fragments extracted from Jackson's body all had been fired from the red and silver SCCY 9 millimeter handgun marked as State's Exhibit 16.

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[9] According to this expert witness, the only known individual who "could not be excluded" as having contributed to the mixed DNA profile found on the red pistol was Hernandez, the security guard who last handled that weapon before it was turned over to the police. (Tr. p. 473). No definitive conclusion was reached regarding who handled any other weapon.

{¶ 24} The final witness was Detective Isaiah Kellar of the sheriff's office. Det. Kellar testified that when he responded to Plush sometime after 3:30 a.m. on September 4, 2017, Lattimore already had been transported to the hospital, but Jackson's body remained in place. He said that after gathering information at the scene, he interviewed Williams at police headquarters later that morning. He identified a copy of a form initialed by Williams, indicating that Williams had waived his *Miranda* rights for purposes of that interview (State's Exhibit 79). A DVD of the interview then was played for the jury (State's Exhibit 80).

{¶ 25} During that interview, Williams (bearded and wearing a white t-shirt with red lettering) said he had not met up with anyone in Cincinnati prior to driving to Dayton. He also initially denied knowing the people who came to Plush in a Toyota Camry. Later, however, Williams said "Suave" was in the Camry, but he did not know the person with "Suave." Williams confirmed that "Suave" was Lattimore, whom he'd known for many years. He denied having shot Lattimore, having a gun, or throwing a gun at a security guard. When asked to provide a DNA sample, Williams invoked his right to counsel.

{¶ 26} Det. Kellar interviewed Lattimore at the hospital two days later, on September 6. He also interviewed Vaughn on September 4, and later interviewed Eric Jones ("Self"). Det. Kellar stated that both Lattimore and Vaughn identified the shooter when he first interviewed them.[10]

{¶ 27} The defense presented no witnesses. The jury returned a verdict finding

[10] Det. Kellar did not repeat Lattimore's or Vaughn's hearsay statements regarding the *name* of that shooter, but merely confirmed that their ability to identify the shooter was not a recent development, as had been suggested by defense counsel during his cross-examination of Lattimore and Vaughn.

Williams guilty of all six counts and the related firearm specifications. Subsequently, the trial court found Williams guilty of the seventh count of having weapons under disability. At sentencing, the court merged four other counts with the Count Three murder and Count Six felonious assault, made the sentences on those two counts and the related firearm specifications consecutive, added a concurrent sentence for having weapons under disability, and imposed an aggregate prison term of 29 years to life.

{¶ 28} Williams's appeal from that judgment sets forth these four assignments of error:

> 1) The [t]rial court [e]rred in [o]verruling Mr. Williams' Motion to Exclude Photographs and [f]ailing to grant an order prohibiting the State from introducing into evidence a multitude of photographs of the victim, both from the autopsy and from the crime scene.
>
> 2) The [t]rial [c]court [e]rred when it [o]verruled Mr. Williams' Motion to suppress any and all evidence, including statements, obtained as a result of the violation of [Williams's] constitutional rights, and the procedural safeguards established by *Miranda.*
>
> 3) The [t]rial [c]ourt [e]rred in [o]verruling Mr. Williams' [m]otion to suppress as evidence at trial any and all identification testimony that the prosecuting attorney [m]ight attempt to introduce into evidence at trial, including but not limited to any prior out[-]of[-]court identification evidence of [Williams] and any in[-]court identification of [Williams] * * *.
>
> 4) Mr. Williams received ineffective assistance of counsel when counsel failed to properly advise him throughout the course of the proceedings in

violation of Mr. Williams' Sixth and Fourteenth Amendment rights under both the United States and Ohio Constitution.

{¶ 29} We will address those assignments of error in the order most conducive to our analysis.

Assignment #3 – Motion to Suppress Identification Evidence

{¶ 30} Williams's third assignment of error argues that the trial court erred when it overruled his motion to suppress "any and all identification testimony." However, the record reveals that the trial court did *not* overrule Williams's motion to suppress such evidence. Rather, during a pre-trial conference regarding Williams's then-pending motions, Williams's attorney explicitly *withdrew* that motion to suppress. The record reflects the following exchange on that topic:

> [Trial court]: All right. Now, there's been a motion filed to suppress identification. Where do we stand on that?
>
> * * *
>
> [Trial court]: My understanding [is] that there were no photospread identifications or show up identifications. Is that correct?
>
> [Prosecutor]: That's correct, Your Honor.
>
> [Trial court]: So[,] a lot of times the motion is made to flush [sic] out whether there are any identifications that we don't know about. There having been no identifications, this is withdrawn * * *?
>
> [Defense counsel]: Yes, Your Honor, for the aforementioned reasons.

(Tr. p. 7).

{¶ 31} Because Williams withdrew his motion to suppress identification evidence,

there can be no error pertaining to the court's action on that issue, and Williams's third assignment of error is overruled.

Assignment #2- Motion to Suppress Evidence Obtained in Violation of *Miranda*

{¶ 32} In his second assignment of error, Williams urges that the trial court erred by overruling his motion to suppress "any and all evidence, including statements, obtained as a result of the violation of" his constitutional rights as recognized in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Once again, no factual basis exists for that argument.

{¶ 33} During the same pre-trial conference referenced above, the following occurred:

> [Defense counsel]: There was a general one-page motion to suppress seeking to suppress statements and anything taken from Mr. Williams[,] which would include any personal effects, DNA, and so forth.
>
> After becoming acquainted with the discovery, there's no DNA or fingerprints attributed to Mr. Williams in this case to this point. Number two, there was nothing taken – no property taken from Mr. Williams or any personal effects. And then thirdly, his statement I'm acquainted with and I listened to it time and time again, I don't want to suppress that, so I'm going to withdraw the motion.
>
> [Trial court]: Okay. So the supplemental motion to suppress statement is withdrawn.

(Tr. p. 6).

{¶ 34} As the trial court did not overrule a motion by Williams to suppress his

statements or other evidence allegedly obtained in derogation of *Miranda*, his second assignment of error lacks merit and is overruled.

Assignment #1 – Motion to Exclude Inflammatory Photographs

{¶ 35} Williams's first assignment of error argues that the trial court erred by denying his motion to exclude photographs taken of Jackson, the deceased shooting victim, at the crime scene and during his autopsy.[11] On this issue, the trial court did overrule Williams's motion, permitting the prosecution to introduce into evidence two photographs of Jackson's bloodied body on the ground outside Plush, including one close-up of the entry wound to the back of his head. (*See* State's Exhibits13, 14).[12] The court also allowed the admission of six photographs of Jackson during his autopsy: one head shot and one clothed full-body shot of Jackson lying on the autopsy table; two close-ups of the entry wound to the back of Jackson's head after hair had been shaven from the immediate area; and two photographs of Jackson's brain after it was removed from his skull.[13] Williams contends that those photographs "inflamed the Jury's passion, resulting in a verdict based on tainted evidence," and thus denied him a fair trial.

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[11] Although Williams refers generally to "multiple photographs of the deceased from the autopsy and crime scene," he does not identify by exhibit number the specific photographs he deems objectionable.

[12] The State's appellate memorandum notes that the admitted exhibits also included three crime scene photographs that capture a sheet covering Jackson's body (*see* State's Exhibits 11, 12, 20). Those photographs do not appear to be gruesome or inflammatory in the same manner as the other photographs we will discuss and do not bolster Williams's assignment of error.

[13] Two additional exhibits from the autopsy – one picturing an x-ray of Jackson's skull that shows the location of the bullet, and the other a photograph depicting the bullet jacket and fragments after removal (State's Exhibits 7, 8) – likewise are dissimilar from the others and do not lend support to Williams's position.

a. Standard of Review

{¶ 36} A trial court has broad discretion to admit or exclude evidence, and its exercise of that discretion will not be disturbed on appeal absent an abuse of discretion. *State v. Easterling*, 2019-Ohio-2470, __ N.E.3d __, ¶ 54 (2d Dist.), citing *State v. Norris*, 2d Dist. Montgomery No. 26147, 2015-Ohio-624, ¶ 14. "A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary." *Id.*, quoting *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. That standard applies to the admission or exclusion of photographic evidence. *State v. Whitfield*, 2d Dist. Montgomery No. 22432, 2009-Ohio-293, ¶ 122.

{¶ 37} Under Evid.R. 403(A), "a trial court may reject an otherwise admissible photograph which, because of its inflammatory nature, creates a danger of prejudicial impact that substantially outweighs the probative value of the photograph as evidence." *State v. Jones*, 2d Dist. Montgomery No. 27354, 2018-Ohio-2332, ¶ 44, quoting *State v. Morales*, 32 Ohio St.3d 242, 257, 513 N.E.2d 276 (1987). However, " '[i]t is to be expected that most photographs of a murder victim will depict blood and will be gruesome by their very nature.' " *State v. Winbush*, 2017-Ohio-696, 85 N.E.3d 501, ¶ 46 (2d Dist.), quoting *State v. Moss*, 2d Dist. Montgomery No. 22496, 2008-Ohio-6969, ¶ 28. Therefore, " 'the mere fact that a photograph is gruesome or horrendous is not sufficient to render it *per se* inadmissible.' " (Emphasis sic.) *Jones* at ¶ 44, quoting *Morales* at 260.

b. Analysis

{¶ 38} In this case, the trial court did not abuse its discretion by determining that the probative value of the photographs admitted was not substantially outweighed by their potential for unfair prejudice. The two photographs of Jackson's body taken at the crime

scene gave context to the witnesses' testimony about the circumstances of the shooting and the manner in which Jackson died. Similarly, the contested photographs from Jackson's autopsy illustrated the forensic pathologist's testimony, and they were not overly repetitive. The pathologist testified that Jackson's face had been cleaned prior to the one close-up photograph of his head while on the autopsy table (Tr. p. 494; *see* State's Exhibit 2), reducing the goriness of that picture. Additionally, the two photographs of Jackson's brain, while admittedly gruesome, depicted the extent of the internal damage done by the bullet despite the seemingly small entry wound, giving visual evidence of Jackson's cause of death. Further, the record contains "thumbnail" renditions of multiple other photographs from Jackson's autopsy that the State submitted to the trial court for comparison but opted not to submit to the jury. (*See* Court's Exhibit I). Many of those photographs, including some of Jackson's nude body on the autopsy table and some of his brain within his opened skull, are objectively more disturbing or potentially prejudicial than those the State chose for display to the jury. The photographs admitted by the trial court were not unduly inflammatory.

{¶ 39} Williams's first assignment of error is overruled.

Assignment of Error #4 – Ineffective Assistance of Counsel

{¶ 40} Finally, Williams argues in his fourth assignment of error that he was denied his constitutional right to the effective assistance of counsel because his trial attorney "failed to properly advise him throughout the course of the proceedings." Specifically, but without further elaboration, Williams contends that his trial counsel performed deficiently by failing to "provide discovery to Mr. Williams; obtain ballistic expertise and a detective to investigate the case; seek suppression of evidence at trial; and * * * investigate and

properly prepare for trial and sentencing."[14]

a. Standard of Review

{¶ 41} To establish ineffective assistance of counsel, a defendant must demonstrate both that trial counsel's conduct fell below an objective standard of reasonableness and that the errors were serious enough to create a reasonable probability that, but for the errors, the outcome of the case would have been different. *See Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley,* 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989). Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective assistance of counsel. *State v. Cook*, 65 Ohio St.3d 516, 524-525, 605 N.E.2d 70 (1992); *State v. Fields*, 2017-Ohio-400, 84 N.E.3d 193, ¶ 38 (2d Dist.). Trial counsel is also entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. *Strickland* at 689.

b. Analysis

{¶ 42} Williams has failed to demonstrate that his trial attorney provided deficient representation. Although he faults his counsel for allegedly failing to provide him with "discovery," he does not explain what particular materials he believes his attorney should have shared but did not, nor does he explain how the purported failure to share discovery materials in any way impacted the defense of his case. The record demonstrates that Williams's trial attorney requested and received from the prosecution all materials

[14] To the extent that any of these broad, unelaborated assertions may rely upon evidence outside the trial record, they are not properly raised on this direct appeal, but might be appropriate subjects for a petition for postconviction relief.

normally obtained through discovery in criminal matters, and used that discovery in extensively cross-examining prosecution witnesses. We have no basis for concluding that trial counsel performed deficiently in that regard.

{¶ 43} As to his criticism of trial counsel's failure to retain a ballistics expert or engage an independent investigator, Williams again fails to demonstrate how those alleged omissions affected the outcome of his trial. Defense counsel vigorously cross-examined the State's forensic firearms examiner about her conclusion that the bullet that killed Jackson came from the red and silver handgun that the prosecution sought to connect to Williams. Nothing in the record suggests that a different ballistics expert would have reached a different conclusion. Additionally, especially given Williams's denial during his police interview that the red handgun belonged to him, trial counsel cannot be second guessed for pursuing a defense strategy focused on the lack of physical (i.e., DNA or fingerprint) evidence tying Williams to that gun rather than on disproving that such gun was the murder weapon. Furthermore, even if conflicting expert opinions had been presented regarding the lethal bullet's source, multiple eyewitnesses identified Williams as the only active shooter on the premises at Plush at the time of the shootings. We are unable to conclude that the retention of either a ballistics expert or an investigator for the defense would have created a reasonable probability that Williams would have been acquitted.

{¶ 44} With respect to efforts to suppress evidence, Williams again does not identify what evidence he believes his attorney should have tried to exclude but did not. As discussed above, defense counsel did attempt, albeit unsuccessfully, to prevent the admission of certain photographs of Jackson's body. Although Williams's trial attorney

voluntarily withdrew other motions to suppress, the record confirms that challenging Williams's identification was not a viable defense in this case, where Williams was well known to the surviving shooting victim (Lattimore) and at least one other eyewitness (Vaughn), both of whom identified him as the shooter. His trial attorney also reasonably assessed the statements Williams made during his police interview to be not significantly probative of guilt. Williams has not demonstrated that the outcome of his trial would have been changed by further efforts to exclude evidence presented by the State.

{¶ 45} Finally, the record does not substantiate Williams's bald suggestion that his trial attorney failed to investigate his case or to properly prepare for his trial and sentencing. To the contrary, the record shows that defense counsel filed numerous pretrial motions, questioned potential jurors extensively during voir dire, displayed in-depth knowledge about and understanding of Williams's case throughout his opening statement and closing argument, and vigorously cross-examined prosecution witnesses about their prior written statements to the police, their prior criminal convictions, and other matters reflecting on the reliability or credibility of their testimony. Indeed, the trial court specifically remarked on the thoroughness of defense counsel's cross-examination of witnesses by using their prior written statements. (Tr. p. 728).[15]

{¶ 46} Because Williams has shown neither that his trial attorney's performance fell below an objective standard of reasonableness nor that any omission by his attorney was serious enough to create a reasonable probability that the outcome of the case would have been different but for those omissions, his fourth and final assignment of error is

[15] There, the trial court stated, "I don't think this Court * * * has seen a more thorough cross examination of * * * witnesses about" their statements made to the police.

overruled.

Conclusion

{¶ 47} The judgment of the trial court will be affirmed.

. . . . . .

DONOVAN, J. and HALL, J., concur.

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