

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 24AP-364 (C.P.C. No. 21CR-992)
v.	:	and
Dwight E. Turner, Jr.,	:	No. 24AP-365 (C.P.C. No. 21CR-988)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on October 13, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee. **Argued:** *Seth L. Gilbert*.

On brief: *Carpenter Lipps LLP*, *Kort Gatterdam*, and *Michael Rogers*, for appellant. **Argued:** *Michael Rogers*.

APPEALS from the Franklin County Court of Common Pleas

BOGGS, P.J.

{¶ 1} Defendant-appellant, Dwight E. Turner, Jr., appeals the judgments of the Franklin County Court of Common Pleas which convicted him of two counts of murder, felonious assault, improperly discharging a firearm at or into a habitation, having a weapon while under disability, firearm specifications, and found him guilty of a repeat violent offender specification.

I. PROCEDURAL HISTORY AND FACTS

{¶ 2} The events giving rise to this case occurred on March 3, 2021. At trial, the state argued and presented evidence that on March 3, 2021, Turner went to W.S. and A.S.'s home looking for their daughter, whom he dated. When she did not appear, Turner fired shots into the home. However, no one was injured. The state also argued and presented evidence that, less than an hour later, Turner appeared at a friend's home on North Oakley

Avenue. Turner convinced his friend, R.J., to come outside, after which gunshots were heard. R.J. then died from a gunshot wound to the chest.

{¶ 3} On March 12, 2021, Turner was charged in two indictments. In Franklin C.P. case No. 21CR-988, Turner was charged in relation to R.J.'s death with two counts of murder, in violation of R.C. 2903.02, with a three-year firearm specification and a repeat violent offender specification, and one count of having weapons while under disability with a three-year firearm specification. In Franklin C.P. case No. 21CR-992, Turner was charged with two counts of felonious assault, in violation of R.C. 2903.11, each count with a three-year firearm specification and a repeat violent offender specification; one count of improperly discharging a firearm at or into a habitation or a school safety zone in violation of R.C. 2923.161, with a three-year firearm specification and a repeat violent offender specification; and one count of having weapons while under disability with a three-year firearm specification.

{¶ 4} On January 7, 2022, the state filed a motion for joinder of case Nos. 21CR-988 and 21CR-992 for the purposes of a single trial. On June 2, 2022, Turner filed a memorandum contra to the state's motion. On January 9, 2023, the trial court held a hearing on the state's motion wherein the court granted joinder.

{¶ 5} Trial began on April 29, 2024, and the state called 12 witnesses. The first witness, W.S., testified that on the evening of March 3, 2021, he was sleeping on the couch in his home on Payday Lane in Columbus when his wife, A.S., woke him up. W.S. testified that his wife told him someone was knocking and pounding on their door and asking about their daughter. W.S. didn't recognize the person at the door and stated, "I don't know you, man. I'm not letting you in my house." (Apr. 30, 2024 Tr. at 248.) W.S. testified that shortly thereafter gunshots were fired but that he and his wife were not injured. W.S. stated that his wife then called 911. W.S. stated that later he and his wife, and their daughter, looked at their home security camera footage and determined that the individual at their front door was Turner. W.S. stated he originally didn't recognize Turner because he had not seen him in glasses before. The state introduced video recordings from the security camera that showed a man in glasses knocking on the front door and firing gunshots at the house. W.S. also testified that in April 2022, he received a letter that he believes was from Turner, apologizing for the incident at their home on March 3, 2021.

{¶ 6} The jury also heard testimony from A.S. regarding the night of March 3, 2021. A.S. also testified that she didn't recognize Turner at first because of his glasses. A.S. also identified Turner in the courtroom.

{¶ 7} The state called Detective Robert T. Stubblefield from the Columbus Division of Police, who was the lead detective and responded to the call at Payday Lane. Detective Stubblefield testified that he prepared a photo array for A.S. and W.S., who both identified Turner as the suspect. Detective Stubblefield also testified that the police found shell casings and bullet holes in a window and in the siding of the home. Detective Stubblefield also identified a wallet that was found outside A.S. and W.S.'s home by another officer. He testified that the wallet contained a driver's license and several other cards listed with the name Dwight Turner.

{¶ 8} The jury heard testimony from Detective Christopher Jones from the Columbus Division of Police, who investigated an incident on March 3, 2021 at North Oakley Avenue in Columbus. Detective Jones testified that when he arrived at the scene it was "chaos." Detective Jones stated that he saw numerous people around the residence and that R.J., who had already been pronounced dead, was laying inside the front door by a stairwell. He also testified that he interviewed several witnesses and first responders which led to him identifying Turner as a potential suspect. Detective Jones also testified as to the 911 call, the identification of Turner's vehicle, a report on Turner's phone use and location around the time of the incidents, and a coroner's report on R.J., which found that the cause of death was a gunshot wound to the torso.

{¶ 9} The state also called Detective Lowell Titus with the Columbus Division of Police, homicide unit. Detective Titus testified that on March 3, 2021 he was the scene detective who was called out to North Oakley Avenue. He testified that he and his team were looking for evidence such as shell casings, blood, and tire tracks.

{¶ 10} The state called Gary Cooper with the Columbus Division of Police, Crime Scene Search Unit. Cooper testified at trial that he took photographs of the scene, including of R.J., and of evidence found at North Oakley Avenue.

{¶ 11} The state also called Caleb Worley, a forensic scientist with the Columbus Police Crime Laboratory, who prepared a comparison report for the incidents occurring on

March 3, 2021. Worley testified that nine firearm cartridge cases were recovered from both scenes and that he determined all of those cartridges were fired from the same firearm.

{¶ 12} The state called C.J., who testified that she lived across the street from North Oakley Avenue on March 3, 2021. C.J. testified that on the evening of March 3, 2021 she was watching television in her home when she saw a gray vehicle pull up quickly to 199 North Oakley Avenue, jump the curb, and park. She said she saw a “black male get out, slim figure, probably late twenties, early thirties. He had on a sweatsuit.” (Tr. at 511.) She stated that she saw her neighbor R.J., also known as “Hot Rod,” go outside and speak with the man. She testified that, when she turned back to watching television, she heard gunshots. She stated that she then saw R.J. clutch his chest, go back inside his home, and she saw the other man run away with a gun and then drive away in the vehicle. C.J. called 911.

{¶ 13} D.F., who lived next to R.J. at the time of the incident, also testified at trial. She stated that on the evening of March 3, 2021, she and her partner had gone to bed when she heard gunshots. She ran to her window where she heard more gunshots and saw a man with a gun in hand enter a car and leave North Oakley Avenue. She stated that she and her partner grabbed towels and ran over to help her neighbor. She testified that, when she arrived next door, she saw R.J. on the floor with two wounds, and she attempted to administer aid until the EMTs arrived at the scene.

{¶ 14} A.Q., R.J.’s daughter, was also called by the state to testify. She stated that on the night of March 3, 2021, she was home with R.J., her mother, several family friends, and her boyfriend, D.F., when there was a knock on the door. A.Q. testified that R.J. stated it was “Black” at the door, and she also stated that she recognized Turner’s voice. She stated that R.J. went outside to talk with Turner and then she heard gunshots. R.J. then ran inside and A.Q. noticed that he was shot and repeatedly told the individuals in the house that it was “Black.” A.Q. identified Turner in the courtroom as the man she knew as “Black” and the voice she recognized on March 3, 2021.

{¶ 15} D.F. also testified that on the night of March 3, 2021 he was at North Oakley Avenue with his girlfriend A.Q. and her family. He testified that when there was a knock at the door, he opened it and saw a man he knew was a friend of the family and was known as “Black.” D.F. stated that R.J. went outside to talk with “Black” and that shortly thereafter

D.F. heard gunshots. D.F. testified that he was unable to identify “Black” from a photo array but identified Turner as “Black” in the courtroom.

{¶ 16} Finally, the state called D.Q., who had been in a relationship with and was living with R.J. in March 2021. The couple had been together for 19 years and had five children together. D.Q. stated that she and R.J. had known Turner since she was 15 years old and that he was a close friend of the family, visiting their house nearly every day. D.Q. stated that on the night of March 3, 2021, D.F. answered a knock at the door and stated that it was “Uncle Black.” She stated that R.J. went outside to speak with Turner and closed the front door. Then, shortly later, she heard gunshots from outside the front door. D.Q. testified that R.J. “bust[ed]” back into the house, holding his shoulder and repeating, “Black shot me!” D.Q. called 911 and looked outside to see Black running to his car. D.Q. testified that R.J. died shortly before the police arrived. D.Q. identified Turner in the courtroom as the man she knew as “Black.”

{¶ 17} At the conclusion of the state’s case-in-chief, Turner’s counsel moved for a Crim.R. 29 dismissal, which the trial court denied. On May 3, 2024, the jury found Turner guilty of one count of murder as charged in count five of the indictment and that he displayed, brandished, indicated or used a firearm to commit the offense. The jury also found Turner guilty of felonious assault and improperly discharging a firearm at or into a habitation. The court also found Turner guilty of two counts of having weapons while under disability, guilty as to the various firearm specifications, and guilty as to the repeat violent offender specification. Turner was sentenced to a total prison term of 31 years to life.

{¶ 18} On June 11, 2024, Turner filed a notice of appeal with this court.

II. ASSIGNMENTS OF ERROR

{¶ 19} Turner argues the following assignments of error:

1. The trial court abused its discretion in granting appellee’s motion to join the two indictments, which involved separate incidents, and/or committed plain error in failing to sever them, thus violating appellant’s due process and fair trial rights guaranteed by the United States and Ohio Constitutions.
2. The trial court violated appellant’s rights to due process and a fair trial when it entered a judgment of conviction based on insufficient evidence and against the manifest weight of the

evidence in violation of appellant's rights under the United States and Ohio Constitutions.

3. The trial court plainly erred and denied appellant a fair trial and due process by admitting repetitive, gruesome photographs of the deceased.

4. Appellant was deprived of the effective assistance of trial counsel in violation of appellant's rights under the Sixth and Fourteenth Amendments to the United States Constitution, and Section 10 and 16, Article I of the Ohio Constitution.

III. DISCUSSION

A. Assignment of Error No. 1

{¶ 20} In his first assignment of error, Turner argues that the trial court abused its discretion in granting the state's motion to join the indictments from the Payday Lane incident and the North Oakley Avenue incident. We do not agree.

{¶ 21} We review a trial court's decision on joinder of offenses for trial under an abuse of discretion standard. *State v. Banks*, 2010-Ohio-5714, ¶ 30 (10th Dist.), citing *State v. LaMar*, 2002-Ohio-2128. The term "abuse of discretion" "implies that the court's attitude was unreasonable, arbitrary or unconscionable." *Id.*

{¶ 22} "The court may order two or more indictments . . . to be tried together, if the offenses . . . could have been joined in a single indictment." Crim.R. 13. Crim.R. 8(A) states that two or more offenses may be charged in the same indictment if they are of "the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct." *State v. Sullivan*, 2011-Ohio-6384, ¶ 21 (10th Dist.). The law favors joining multiple offenses in a single trial because it conserves judicial and prosecutorial time, lessens the considerable expenses associated with multiple trials, diminishes inconvenience to witnesses, and minimizes the possibility of inconsistent results in successive trials before different juries. *Id.*, citing *State v. Walters*, 2007-Ohio-5554, ¶ 21 (10th Dist.).

However, even if Crim.R. 8(A) and 13 sanction the joinder of indictments for trial, a trial court should nevertheless order separate trials pursuant to Crim.R. 14 if the defendant establishes that joinder prejudices him or her. *Gordon* at ¶ 20. Importantly, in order to obtain severance under Crim.R. 14, the

defendant “has the burden of furnishing the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant’s right to a fair trial.” *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981).

The state may rebut a defendant’s allegations of prejudicial joinder in two different ways. First, it may counteract the alleged prejudice by showing that it could introduce evidence of the joined offenses as “other acts” under Evid.R. 404(B) if separate trials occurred. *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). Second, the state may negate a claim of prejudice by showing “that evidence of each crime joined at trial is simple and direct.” *Id.* The state need only make one of the two showings in order to overcome a defendant’s claim of prejudice. *State v. Bass*, 10th Dist. No. 12AP-622, 2013-Ohio-4503, ¶ 13.

State v. Parham, 2019-Ohio-358, ¶ 18-19 (10th Dist.).

{¶ 23} The questions now before us are whether the trial court abused its discretion in granting the state’s motion for joinder, whether Turner was prejudiced by joinder, and whether the state could have introduced evidence of the two incidents under Evid.R. 404(B) or the evidence is simple and direct.

{¶ 24} We first turn to the trial court’s January 10, 2023 decision on joinder and find no abuse of discretion by the trial court in granting the state’s motion. The trial court’s January 10, 2023 decision found that the evidence “appears to be interrelated and can reasonably be joined as constituting parts of a common scheme, plan, or course of criminal conduct. In addition, the Court finds Defendant did not meet his burden of proof that the joinder of the charges is prejudicial to him or an abuse of discretion by the trial court.” (Jan. 10, 2023 Decision at 3.) The trial court rejected Turner’s argument that the state was attempting to bootstrap a guilty verdict from one case to another. The trial court cited *State v. Torres*, 66 Ohio St.2d 340 (1981), for the contention that a jury is believed capable of segregating the proof on multiple charges when each charge is uncomplicated. As the trial court noted, the two incidents were similar in nature, with Turner knocking at the door at both the Payday Lane home and the North Oakley Avenue home and firing shots. Turner also appeared to have driven immediately to the North Oakley Avenue home from the Payday Lane home. The state also presented evidence that Turner’s wallet was found at the

Payday Lane scene and that W.S. believed Turner wrote a letter apologizing to him. The state also asserted that the shell casings recovered at both scenes confirmed that the same gun was used in both incidents. We therefore find no abuse of discretion by the trial court, as the evidence reasonably indicated that the two incidents were related.

{¶ 25} Before we turn to whether Turner was prejudiced by the trial court’s decision to grant joinder and the state’s Evid.R. 404(B) arguments, we note that while Turner opposed the state’s motion for joinder, he did not preserve his severance arguments and has therefore forfeited those arguments as to all but plain error. *State v. Gravely*, 188 Ohio App.3d 825, 837 (10th Dist. 2010); *State v. Cunningham*, 2024-Ohio-2032, ¶ 40 (10th Dist.); *State v. Stiles*, 2009-Ohio-89, ¶ 23 (3d Dist.). To constitute plain error, there must be: (1) an error, *i.e.*, a deviation from a legal rule, (2) that is plain or obvious, and (3) that affected substantial rights, *i.e.*, affected the outcome of the trial. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). Even if an error satisfies these prongs, appellate courts are not required to correct the error. Appellate courts retain discretion to correct plain errors. *Id.*; *State v. Litreal*, 2006-Ohio-5416, ¶ 12 (4th Dist.). Courts are to notice plain error under Crim.R. 52(B) “ ‘with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.’ ” *Barnes*, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of syllabus.

{¶ 26} We find no plain error here, as we do not find that Turner has met his burden of demonstrating prejudice. As noted above, the state can negate a claim of prejudice by showing that evidence of other crimes could have been admitted under Evid.R. 404(B) or by showing that the evidence is simple and direct. We first turn to Evid.R. 404(B) which permits the admission of evidence of “other crimes, wrongs, or acts . . . as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” so long as such evidence of other acts is not offered to show propensity. Evidence of crimes may be introduced to prove identity if the defendant “ ‘committed similar crimes within a period of time reasonably near to the offense on trial, and that a similar scheme, plan or system was utilized to commit both the offense at issue and the other crimes.’ ” *State v. Shedrick*, 61 Ohio St.3d 331, 337 (1991), quoting *State v. Curry*, 43 Ohio St.2d 66, 73 (1975). *See also State v. Lowe*, 69 Ohio St.3d 527 (1994), paragraph one of the syllabus (“To be admissible to prove identity through a certain modus operandi, other-acts evidence

must be related to and share common features with the crime in question.”). We also note that the Supreme Court of Ohio has found that “[e]vidence tending to show that the same gun was used in both crimes is pertinent to the issue of identity.” *State v. Williams*, 73 Ohio St.3d 153, 158 (1995).

{¶ 27} Such are the circumstances here. As we have already noted, the two incidents were similar in nature and occurred within a short period of time, and, of particular import, the evidence at trial indicated that the same gun was used in both incidents. Because evidence as to the Payday Lane incident would be admissible under Evid.R. 404(B) to prove identity as to the North Oakley Avenue incident, the “other acts” test has been met and rebuts Turner’s claim of prejudicial joinder. Therefore, we need not also consider the “simple and direct” evidence test. Accordingly, we overrule Turner’s first assignment of error.

B. Assignment of Error No. 2

{¶ 28} In Turner’s second assignment of error, he argues that his conviction was based on insufficient evidence and was against the manifest weight of the evidence.

{¶ 29} Whether the evidence is sufficient as a matter of law to support a conviction is a determination of whether the state met its burden of production at trial. *See, e.g., State v. Smith*, 2004-Ohio-4786, ¶ 16 (10th Dist.); *State v. Frazier*, 2007-Ohio-11, ¶ 7 (10th Dist.); *State v. Thompkins*, 1997-Ohio-52. We do not weigh the evidence but instead determine “ ‘whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ ” *State v. Leonard*, 2004-Ohio-6235, ¶ 67, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 30} In evaluating a sufficiency challenge, we assume the state’s witnesses testified truthfully and determine whether that testimony and any other evidence presented at trial satisfied each element of the offenses. *See State v. Magan*, 2026-Ohio-1466, ¶ 25 (10th Dist.), citing *State v. Watkins*, 2016-Ohio-8272, ¶ 31 (10th Dist.). Thus, evidence is sufficient to support a conviction where, if believed, that evidence would allow any rational trier of fact to conclude that the state proved each element of the offense beyond a reasonable doubt. *Frazier* at ¶ 7, citing *Jenks* at paragraph two of the syllabus.

{¶ 31} A challenge to the manifest weight of the evidence attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion. *See, e.g., State v. Richey*, 2018-Ohio-3498, ¶ 50 (10th Dist.), citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 11-13, citing *Thompkins* at ¶ 24. “Although evidence may be sufficient to sustain a guilty verdict, the issue of manifest weight requires a different type of analysis.” *State v. Walker*, 2003-Ohio-986, ¶ 43 (10th Dist.). “[W]eight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other.” *State v. Petty*, 2017-Ohio-1062, ¶ 60 (10th Dist.), quoting *State v. Boone*, 2015-Ohio-2648, ¶ 49 (10th Dist.), citing *Thompkins* at ¶ 24.

{¶ 32} When considering an appellant’s claim that a conviction is against the manifest weight of the evidence, this court sits as a “thirteenth juror” and may disagree “with the factfinder’s resolution of the conflicting testimony.” *Thompkins* at ¶ 25, citing *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). *See also State v. Martin*, 2022-Ohio-4175, ¶ 26. “In making this determination, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the witnesses’ credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Brefford*, 2025-Ohio-4436, ¶ 82 (10th Dist.), citing *Sparre v. Ohio Dept. of Transp.*, 2013-Ohio-4153, ¶ 10 (10th Dist.); *Eastley* at ¶ 20; *Thompkins* at ¶ 25; *Martin* at ¶ 26.

{¶ 33} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding credibility of witnesses and the weight of testimony are primarily for the trier of fact. *See, e.g., Brefford* at ¶ 83; *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The trier of fact is best able “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 34} Turner’s argument on the sufficiency and weight of the evidence centers around inconsistencies in the testimony of witnesses. For example, Turner takes issue with conflicting descriptions of the shooter’s clothing, like whether the shooter was wearing a sweatshirt or jeans or shorts. However, a defendant “is not entitled to a reversal on manifest

weight grounds merely because inconsistent evidence was presented.” *State v. Rankin*, 2011-Ohio-5131, ¶ 29 (10th Dist.). It is well-established that “ ‘[t]he finder of fact can accept all, part or none of the testimony offered by a witness, whether it is expert opinion or eyewitness fact, and whether it is merely evidential or tends to prove the ultimate fact.’ ” *Petty*, 2017-Ohio-1062, at ¶ 63 (10th Dist.), quoting *State v. Mullins*, 2016-Ohio-8347, ¶ 39 (10th Dist.). See also *State v. Mann*, 2011-Ohio-5286, ¶ 37 (10th Dist.), quoting *State v. Nivens*, 1996 Ohio App. LEXIS 2245, *7 (10th Dist. May 28, 1996) (“ ‘While [a factfinder] may take note of the inconsistencies and resolve or discount them accordingly, . . . such inconsistencies do not render defendant’s conviction against the manifest weight or sufficiency of the evidence.’ ”). Thus, “ ‘where a factual issue depends solely upon a determination of which witnesses to believe, that is the credibility of witnesses, a reviewing court will not, except upon extremely extraordinary circumstances, reverse a factual finding . . . as being against the manifest weight of the evidence.’ ” *In re L.J.*, 2012-Ohio-1414, ¶ 21 (10th Dist.), quoting *In re Johnson*, 2005-Ohio-4389, ¶ 26 (10th Dist.).

{¶ 35} Turner also takes issue with various witness’ identification of him as the shooter at the Payday Lane and the North Oakley Avenue incidents. For example, Turner directs this court to W.S. testifying that he did not recognize Turner because he had glasses on, but W.S. identified him on a photo array and in court. However, a witness’s inability or unwillingness to identify a defendant in a pre-trial setting does not necessarily discredit an in-court identification. See, e.g., *State v. Dennis*, 2006-Ohio-5777, ¶ 13 (10th Dist.) (witness’s in-court identification does not render verdict against the manifest weight of the evidence even though witness was unable to identify the defendant in a photo array prior to trial); *State v. Johnson*, 2005-Ohio-4243, ¶ 57 (10th Dist.) (finding a witness’s failure to identify a defendant in a black-and-white photo array prior to trial did not discount the witness’s confident, in-person identification of the defendant during a bindover hearing).

{¶ 36} Ultimately the inconsistencies of witness testimony that Turner directs this court to do not weigh against the manifest weight of the evidence or show that the jury lost its way. Rather, the jury was free to believe or disbelieve witness testimony and was best able to resolve any inconsistencies. There was also significant evidence, including witnesses referencing “Black,” discovery of Turner’s wallet at the Payday Lane scene, and the evidence indicating the same firearm was used in the two incidents makes us unable to conclude

these minor inconsistencies rendered Turner's convictions against the manifest weight of the evidence.

{¶ 37} Additionally, Turner argues he should have been acquitted of the felonious assault charge against W.S. because he was acquitted of felonious assault against A.S. He suggests that this court should find that the jury lost its way because merely discharging a firearm into a habitation does not amount to felonious assault. Turner argues that in order for him to be convicted of felonious assault, the State must show that he knowingly attempted to cause W.S. physical harm with a deadly weapon. We are unconvinced. Evidence at trial indicated that Turner communicated with W.S. while he was inside the house establishing that Turner knew W.S. was inside the home when he discharged his firearm. We find this evidence sufficient to support a felonious assault conviction. *See State v. Fisher*, 2023-Ohio-2088, ¶ 24 (6th Dist.); *State v. Elko*, 2004-Ohio-5209, ¶ 54 (8th Dist.). Accordingly, we reject Turner's contention that his conviction was against the manifest weight of the evidence.

{¶ 38} “ ‘Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis.’ ” *In re T.W.*, 2024-Ohio-4697, ¶ 40 (10th Dist.), quoting *State v. McCrary*, 2011-Ohio-3161, ¶ 11 (10th Dist.). Therefore, “a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency.” *State v. Knight*, 2016-Ohio-8134, ¶ 36 (10th Dist.). As we have determined that Turner's conviction was not against the manifest weight of the evidence, we also determine that his conviction was supported by sufficient evidence. We overrule Turner's second assignment of error.

C. Assignment of Error No. 3

{¶ 39} Turner's third assignment of error argued that the trial court erred in admitting repetitive, gruesome photographs of R.J.'s body.

{¶ 40} The admission of photographic evidence, including photographs of a murder victim, is within the sound discretion of the trial court. *State v. Hill*, 12 Ohio St.2d 88, 90 (1967). We review a trial court's admission of such evidence under an abuse of discretion standard of review. *State v. Albert*, 2015-Ohio-249, ¶ 10 (10th Dist.). An abuse of discretion connotes an attitude by the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). “ ‘Unless the trial court clearly

abuses its discretion, and the defendant has been materially prejudiced thereby,’ we will not disturb the trial court’s decision.” *State v. Ware*, 2004-Ohio-6984, ¶ 32 (10th Dist.), quoting *State v. Woodward*, 2004-Ohio-4418, ¶ 49 (10th Dist.). However, Turner did not object to the admission of the photographs of R.J. until after they had already been shown to the jury during the testimony of Detective Cooper, limiting our review to plain error. See, e.g., *State v. Abdu*, 2025-Ohio-5481, ¶ 50 (10th Dist.), quoting *Petty*, 2017-Ohio-1062, at ¶ 49 (10th Dist.), quoting *State v. Copley*, 2005-Ohio-896, ¶ 32 (10th Dist.) (“[A]n objection to testimony or evidence ‘must be “contemporaneous” to the alleged error.’”). We do not find that the trial court committed plain error, or abused its discretion in admitting the photographs of R.J.

{¶ 41} When considering the admissibility of photographic evidence in non-capital cases, a trial court must employ the balancing test set out in Evid.R. 403. *State v. Jones*, 2019-Ohio-2134, ¶ 33 (10th Dist.). Evid.R. 403(A) provides, “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.” Autopsy photographs—even if gruesome—are not per se inadmissible. *State v. Maurer*, 15 Ohio St.3d 239, 265 (1984). The mere fact that a photograph “is gruesome or horrendous is not sufficient to render it inadmissible if the trial court, in the exercise of its discretion, feels that it would prove useful to the jury.” *Hill* at 90-91, quoting *State v. Woodards*, 6 Ohio St.2d 14, 24 (1966). The state argues that the photographs at issue show R.J.’s body, as it appeared at the crime scene, thereby corroborating the testimony of several witnesses at trial as well as cataloguing R.J.’s injuries and cause of death. We agree and also note that even the “fact that appellant stipulated the cause of death does not automatically render the photographs inadmissible” and that a trial court could find the evidence had probative value beyond Turner’s stipulation. *Maurer* at 265, citing *United States v. Grassi*, 602 F.2d 1192, 1197 (1980).

{¶ 42} Further in continuing our balancing under Evid.R. 403, the danger of prejudice or misleading the jury by admission of the photos does not outweigh its probative value as Turner is only challenging the admission of the photos into evidence, but did not challenge allowing the jury to view the photos during witness testimony. We are also unconvinced that Turner can demonstrate the necessary prejudice by the admission of the

photographs to warrant plain error reversal as the evidence of his guilt at both incidents was overwhelming. We therefore overrule Turner's third assignment of error.

D. Assignment of Error No. 4

{¶ 43} Turner's final assignment of error argues that his trial counsel was ineffective. To establish ineffective assistance of counsel, Turner must show that his counsel's performance was deficient and that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In other words, "[t]his requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable." *Id.* at 687. Under *Strickland*, appellate courts examine counsel's performance under a highly deferential standard, making every effort to "eliminate the distorting effects of hindsight." *Id.* at 689.

{¶ 44} Turner first argues that his counsel was ineffective for their failure to object to Detective Jones's testimony regarding video footage of what appeared to be Turner's vehicle, which Turner asserts was improper opinion testimony under Evid.R. 701. A trial counsel's failure to object does not amount to ineffective assistance of counsel unless the defendant can demonstrate a reasonable probability that, but for his counsel's failure to object, the result of the proceedings would have been different. *State v. Watts*, 2016-Ohio-5386, ¶ 42 (10th Dist.), citing *State v. Valentine*, 2016-Ohio-277, ¶ 24 (10th Dist.). Even assuming, arguendo, that Detective Jones's testimony about identifying Turner's vehicle from video footage was opinion testimony, we do not think Turner has met his burden of establishing that his counsel's performance prejudiced him. There was ample evidence that Turner was the shooter in both the Payday Lane and North Oakley Avenue incidents, that the same firearm was used in both incidents, the discovery of Turner's wallet at the Payday Lane scene, and testimony from several witnesses at the North Oakley Avenue scene that Turner or "Black" was the person at the door, casting doubt on any claims of prejudice here.

{¶ 45} We are also unpersuaded that Detective Jones's testimony veered into inadmissible lay opinion testimony. Turner takes issue with Detective Jones providing testimony on a vehicle that purportedly belonged to Turner. Detective Jones, however, only testified as to what he saw on the video in question and therefore did not cross the line into

inadmissible lay opinion testimony. *See State v. Phillips*, 2015-Ohio-4555, ¶ 65 (10th Dist.); *State v. Tench*, 2018-Ohio-5205, ¶ 221.

{¶ 46} Turner similarly argues that his counsel should have objected to other testimony, such as Detective Jones’s statement that W.S.’s daughter identified Turner as the shooter at the Payday Lane incident and that Detective Stubblefield testified that he was aware there was a link between the two incidents on March 3, 2021. Turner also argues that Detective Jones implied Turner had a prior conviction when he stated the police already had Turner’s fingerprints. Again, we are not persuaded that Turner was prejudiced by his counsel not objecting to these pieces of testimony. As we have previously stated, the overwhelming evidence indicated that Turner was the shooter in both incidents, thereby defeating any claims of prejudice under our *Strickland* analysis. We therefore reject Turner’s arguments here.

{¶ 47} Turner also argues that his counsel was ineffective for failing to renew his motion to sever the charges at the conclusion of the state’s case. However, again, we find no prejudice to Turner as a result of his counsel’s actions here. This court has held that “[c]ounsel’s failure to renew a motion to sever offenses does not constitute ineffective assistance of counsel where the offenses are part of a common scheme or course of criminal conduct and are properly joined.” *State v. Wilson*, 2011-Ohio-430, at ¶ 33 (10th Dist.), citing *State v. Hamblin*, 37 Ohio St.3d 153, 156 (1988). As we have discussed in the first assignment of error, the two indictments were similar in nature, temporal in time, and the evidence indicated the same gun was used at both incidents; they were therefore properly joined. We therefore overrule Turner’s fourth assignment of error.

IV. CONCLUSION

{¶ 48} Having overruled all of Turner’s assignments of errors, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

MENTEL and EDELSTEIN, JJ., concur.
