[Cite as *State v. Patterson*, 2023-Ohio-2350.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - CEDRICK DEON PATTERSON, Defendant-Appellant.	**CASE NO. 2022-T-0092** Criminal Appeal from the Court of Common Pleas Trial Court No. 2021 CR 01075

O P I N I O N

Decided: July 10, 2023
Recommendation: Affirmed

Dennis Watkins, Trumbull County Prosecutor, and *Ryan J. Sanders* and *Christopher D. Becker*, Assistant Prosecutors, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Gregory T. Stralka, 6509 Brecksville Road, P.O. Box 31776, Independence, OH 44131 (For Defendant-Appellant).

EUGENE A. LUCCI, J.

{¶1} Appellant, Cedrick Deon Patterson, appeals the judgment of the Trumbull County Court of Common Pleas, after trial by jury, convicting him of murder, with a firearm specification; felonious assault, with a firearm specification; four counts of having weapons under disability; and carrying concealed weapons. At issue is the trial court's judgment denying appellant's motion to suppress; the trial court's judgment denying appellant's motion to sever and relief from prejudicial joinder; the trial court's denial of appellant's request for a self-defense jury instruction; and the sufficiency of the evidence

upon which one of appellant's convictions for having weapons under disability is based. For the reasons discussed in this opinion, we affirm the trial court.

I. Facts and Procedural Posture

A. November 18, 2021 Incident

{¶2} On this date, Officer John Dina of the Warren Police Department responded to a shooting call at the Riverview Apartments. The apartments include two buildings, the 700 Buckeye St. building and the 250 Tod Avenue building. Upon his arrival to the 700 Buckeye St. building, the officer noticed a blood trail from the lobby to the elevator that continued to Apartment 212, where the caller advised dispatch he was located. Officer Dina took photographs of the scene, including the blood trail leading from the elevator to the outside of the apartment. He also photographed an area of the apartment's lobby where another officer found a firearm casing which was collected as evidence.

{¶3} Officers contacted the apartment-building's management, the Trumbull County Metropolitan Housing Authority, and obtained video of the incident which was recorded on the lobby security camera. Through the video footage, Officer Dina was able to identify the victim as Teauno Smith. Mr. Smith acknowledged he was the individual in the video. He also confirmed he was shot in the groin and, while he did not expressly state his assailant's name, he noted the shooter was a light-skinned, black man. Mr. Smith asserted he was unarmed when he was shot and "had no beef" with the attacker. The casing found in the apartment-building's lobby was later identified as a .380 round.

B. November 21, 2021 Incident

{¶4} On this date, Officer Abigail Krafcik of the Warren Police Department testified she responded to a "shots-fired" call at the 250 Tod Avenue building. Detective Zachary Jones joined Officer Krafcik. Dispatch advised the officers that the shots were heard on the seventh floor of the building.

{¶5} While investigating the seventh floor, appellant came bounding past Officer Krafcik and Detective Jones. Appellant appeared agitated and was shouting incoherently. Appellant approached one of the seventh-floor apartments and began to slam his body into the door. In light of the shots-fired call and appellant's erratic and aggressive behavior, appellant was detained. Appellant advised the officer and detective he had a firearm. Officer Krafcik retrieved a loaded .380 handgun from appellant's left pocket. The weapon was subsequently seized as evidence. Appellant was placed under arrest.

C. November 28, 2021 Incident

{¶6} On this date, Officer Phil Sajnovsky of the Warren Police Department was dispatched to the 250 Tod Avenue building in response to a "person-with-a-gun" report. Kamal Rahim, who lived in apartment 709, placed the report. According to Mr. Rahim, he had observed, through a "Ring" doorbell camera in his apartment, appellant waving a firearm outside the residence. At the scene, the officer encountered appellant in front of Mr. Rahim's residence, apartment 709. Appellant, who was Mr. Rahim's neighbor and resided in apartment 708, did not have a firearm on his person during the encounter with the officer. Mr. Rahim later provided police with the Ring-doorbell-camera footage. At trial, he identified appellant as the individual in the footage with the firearm.

D. December 1, 2021 Murder

{¶7} On this date, Officer David Weber of the Warren Police Department responded to an assault call at the 250 Tod Avenue building. Upon arrival, paramedics were already on scene. The officer entered the building and observed a large puddle of blood on the floor of the elevator. He was then directed to the fourth floor where the victim, Bernard Owens, was located. Mr. Owens' body was slumped on a seat near a window on the fourth floor. Mr. Owens had blood coming from his mouth and the winter vest he was wearing was covered in blood. Paramedics at the scene declared Mr. Owens deceased upon their arrival.

{¶8} Officer Weber, along with other officers, followed a significant blood trail from the fourth floor to the ninth floor. The blood trail ended in front of apartment 907. Officer Weber knocked on the apartment's door and was greeted by Tamia Bady, the apartment's tenant. Ms. Bady indicated she was the only individual in the apartment. She allowed officers into her apartment and Officer Weber checked the residence for other occupants. He found appellant lying in a bedroom, seemingly asleep.

{¶9} Scanning the room, Officer Weber noticed a magazine for a firearm was situated between appellant's legs. The officer activated his flashlight to illuminate the room, which startled appellant. Appellant was somewhat flustered, and, in light of the circumstances, the officer detained him with handcuffs. The officer retrieved the magazine and a live cartridge from the bed on which appellant was lying.

{¶10} Detective John Greaver of the Warren Police Department was also on the scene. Upon entering apartment 907, appellant and Ms. Bady were detained on a couch. He immediately noticed a spent shell casing on the living room floor. Detective Greaver inquired "what happened here?" Appellant stated he "popped a dude." Appellant was

subsequently provided *Miranda* warnings. Officers at the scene discovered appellant had an outstanding warrant. Appellant was taken to the Warren Police Department.

E. Investigation

{¶11} At the police station, appellant was again advised of his *Miranda* rights, which he waived. During the interview, Detective Greaver also obtained a written waiver of appellant's *Miranda* rights and a written consent to search apartment 708 of the Tod Avenue building, appellant's residence.

{¶12} During his interview with Detective Greaver, appellant stated the victim entered the apartment with a firearm, appellant disarmed the victim, and shot him. When asked where the firearm was located, appellant claimed the victim took the weapon after he was shot and left the apartment.

{¶13} When Ms. Bady was interviewed, she stated that appellant had hid the firearm used in the shooting in her apartment. She asserted appellant possessed the firearm throughout the day before the homicide.

{¶14} Detective Greaver noted that, after finding the shell casing on the floor of Ms. Bady's apartment, he noticed a broken piece from a Davis Industries handgun grip in the doorway. In the bathroom of Ms. Bady's apartment, officers recovered several live rounds of .380 ammunition. Ms. Bady stated, after the shooting, she dumped the rounds in the toilet because she feared appellant may attempt to kill her. Ultimately, the magazine located between appellant's legs was for a .380 firearm. And, upon searching appellant's apartment, a live .380 round was retrieved from the residence.

{¶15} Later, Mr. Rahim, appellant's neighbor, provided police with additional Ring-doorbell-camera footage from December 1, 2021, the day of the murder. The

footage showed Mr. Owens walking slowly past the camera. From the footage, Mr. Owens is seen bleeding profusely and waiting for the elevator. Mr. Rahim stated he knew Mr. Owens as "Bernard" from around the building. He had a cordial relationship with "Bernard" and never had any problems with him.

{¶16} According to Ms. Bady, she and appellant were acquaintances and she knew he lived on the seventh floor. She also knew Mr. Owens. Ms. Bady admitted she and Mr. Owens were "real cool, close acquaintances" and she would purchase drugs from him from time to time. On the date of the murder, Ms. Bady owed Mr. Owens $400.

{¶17} That morning, Ms. Bady stated Mr. Owens called her asking for his money. Appellant was in Ms. Bady's apartment at the time of the call, which she picked up on speaker. According to Ms. Bady, appellant advised Mr. Owens he could "[c]ome get it in blood."

{¶18} Ms. Bady left the apartment and met Mr. Owens in the elevator because she wanted to stop him from entering her apartment. She assured Mr. Owens she would obtain his money, she simply needed to retrieve her identification. Mr. Owens was insistent that he was going to accompany Ms. Bady to her apartment. First, however, Mr. Owens stopped at his apartment. Ms. Bady did not know what, if anything, Mr. Owens retrieved, but stated she did not see him with a weapon.

{¶19} Once they returned to Ms. Bady's apartment, appellant and Mr. Owens were "having words." Ms. Bady went to her bedroom to obtain her identification. She was in the bedroom for approximately two minutes when she heard a gunshot. She witnessed Mr. Owens run from her apartment and observed the smear of blood on her door.

Appellant advised Ms. Bady, "I shot him." She stated appellant was holding a firearm in his hand and started to load it.

{¶20} Ms. Bady pleaded with appellant not to start a "shoot out" and not to kill her. Appellant assured Ms. Bady that he "ain't never gonna hurt you." She took the firearm from appellant and placed it on her dresser; according to Ms. Bady, however, appellant subsequently removed the firearm and hid it in the "register," i.e., the baseboard heating unit. The firearm was eventually recovered from the heating unit in Ms. Bady's bedroom. It was a .380 firearm, and one side of the handgrip was missing.

{¶21} Ms. Bady testified she observed appellant with the firearm and never observed appellant take it from Mr. Owens. Indeed, she stated that she had observed appellant with the firearm all morning prior to the shooting.

{¶22} Detective Brian Crites of the Warren Police Department testified he arrived at the scene of the homicide as a crime-scene investigator. Upon arrival, Detective Crites observed blood pooling and blood spatter throughout the elevator. He then went to the fourth floor where Mr. Owens' body was found. He assisted in moving the body and, upon opening the vest Mr. Owens was wearing, observed his shirts were saturated with blood. He additionally observed a small hole in the middle of Mr. Owens' chest. Detective Crites stated, during his investigation, he did not find a firearm on or near Mr. Owens and no firearm was recovered in the common areas where the blood trail was observed.

{¶23} Detective Crites investigated apartment 907 and noted a .380 round, a magazine to a Davis Industries model .380 firearm, and cash located on the bed in the bedroom. Also, officers found a .380 Davis Industries handgun in the baseboard heater located behind a nightstand. The firearm had a round in the chamber but was missing a

magazine. Detective Crites testified the magazine found on the bed would fit the firearm found in the baseboard. Furthermore, the firearm was missing a piece of the handgrip, similar to the handgrip piece found in the doorway of Ms. Bady's apartment. Detective Crites also confirmed that the cartridges found in Ms. Bady's toilet were .380 caliber.

{¶24} Detective Crites identified the handgun recovered from appellant by Officer Krafcik on November 21, 2021. The detective test-fired the firearm and determined it was operable. He additionally testified that the firearm recovered on November 21, 2021 and the firearm found on December 1, 2021 were identical models only with different serial numbers. He testified both firearms were Davis Industries models P380 and were chrome/silver in color.

{¶25} Dr. George Sterbenz, a forensic pathologist with the Trumbull County Coroner's Office, conducted an autopsy on the victim. Dr. Sterbenz testified the victim suffered a gunshot wound to the chest which pierced his heart. The bullet traveled through the victim's heart and into his right lung. The piercing of the lung caused appellant to aspirate blood. The victim's cause of death was a gunshot wound to the chest causing catastrophic internal bleeding. He further asserted the manner of death was homicide. Although the doctor noted in his report that Ms. Bady's apartment showed some disarray, suggesting the homicide may have been preceded by a physical altercation, the victim's body showed no anatomic findings that he was in a physical altercation "immediately or shortly prior to his death."

{¶26} Joshua Barr, a forensic scientist with the Ohio Bureau of Criminal Investigation ("BCI") analyzed, inter alia, the fired shell casing, the bullet recovered from the victim, and the .380 firearm recovered from Ms. Bady's apartment. Mr. Barr test-fired

the firearm and confirmed it was operable. He did a side-by-side comparison of the test-fired casing with the casing recovered from the crime scene and asserted the casings had matching extractor marks. According to Mr. Barr, this indicates both casings were cycled through the same firearm. Mr. Barr additionally confirmed the bullet was cycled through the tested firearm and the magazine recovered from Ms. Bady's bedroom fit the P380 recovered from the baseboard heating unit.

{¶27} Furthermore, Mr. Barr analyzed the fired shell casing and the .380 firearm allegedly used in the assault on Mr. Smith on November 18, 2021. Mr. Barr again confirmed the firearm was operable. He did an additional side-by-side comparison of the test-fired casing with the casing recovered from the crime scene at which Mr. Smith was shot. Mr. Barr concluded the casings had matching extractor marks and confirmed they were cycled through the same firearm, the firearm seized from appellant on November 21, 2021.

F. Indictment, Pretrial Motions, and Trial

{¶28} Appellant was indicted on eight counts: Count One: Murder with a Firearm Specification, an unspecified felony, in violation of R.C. 2903.02(A) and (D) and R.C. 2941.145; Counts Two, Five, Six, and Eight: Having Weapons Under Disability, felonies of the third degree, in violation of R.C. 2923.13(A)(2) and (B); Count Three: Tampering with Evidence, a felony of the third degree, in violation of R.C. 2921.12(A)(1) and (B); Count Four: Felonious Assault with a Firearm Specification, a felony of the second degree, in violation of R.C. 2903.11(A)(1) and (2) and (D)(1)(a) and R.C. 2941.145; and Count Seven: Carrying Concealed Weapons, a felony of the fourth degree, in violation of R.C. 2923.12(A)(2) and (F)(1). Appellant pleaded not guilty to the indictment.

{¶29} Appellant filed a motion to suppress evidence and a motion to bifurcate Counts Two, Five, Six, and Eight (the Having Weapons Under Disability Counts); appellant also filed a motion for relief from prejudicial joinder, focusing primarily on the severance of the Murder count and the Felonious Assault count. The state duly opposed the motions.

{¶30} The trial court denied appellant's motion to bifurcate and his motion for relief from prejudicial joinder. And, after a hearing, the trial court denied the motion to suppress evidence. A jury trial commenced on August 22, 2022. Prior to jury selection, appellant renewed his motion to bifurcate and his motion to sever the murder and felonious assault offenses. The trial court again denied the motions.

{¶31} At the close of evidence, appellant requested a jury instruction on self-defense. The trial court denied the request. The jury subsequently returned a verdict of guilty on each count and specification with the exception of Count Three: Tampering with Evidence, of which appellant was acquitted.

{¶32} After a sentencing hearing, appellant was sentenced to the following: Count One: 15 years to life and three years for the firearm specification; Count Two: 36 months; Count Four: an indefinite term of 11 to 16 and one-half years and three years for the firearm specification; Count Five: 36 months; Count Six: 36 months (Count Seven merged for purposes of sentencing with Count Six); and Count Eight: 36 months. The trial court ordered each count to be served consecutively to one another as well as the specifications for an aggregate, indefinite term of 44 to 49 and one-half years to life imprisonment. Appellant now appeals assigning four errors for our review.

II. Law and Analysis

A. Motion to Suppress Evidence

{¶33} Appellant's first assigned error alleges:

{¶34} "The trial court's denial of the motion to suppress was a prejudicial error as the appellant was not advised of his constitutional rights while he was in custody and his statutory rights were violated regarding self-incrimination."

{¶35} Appellant first contends the trial court erred in denying his motion to suppress evidence because he claims he was in custody and subjected to a custodial interrogation prior to being given *Miranda* warnings. In particular, he alleges he was subjected to a custodial interrogation for eight to nine minutes prior to being Mirandized. As a result, he claims any subsequent statements and signed consent forms should have been suppressed. We do not agree.

{¶36} In his motion to suppress, appellant generically asserted "law enforcement officers arrested Defendant and questioned him without advising him of his *Miranda* rights. Defendant was not properly advised of, nor did he waive his constitutional rights prior to being interrogated by law enforcement. As such, any subsequent statements alleged to have been made by Defendant must be suppressed."

{¶37} A hearing on the motion was held at which the state presented several witnesses. Sergeant Geoffrey Fusco of the Warren Police Department testified he arrived on the scene and met with Officer Weber. The officers followed a significant blood trail up the apartment building's stairs to the ninth floor to Ms. Bady's apartment, 907. Ms. Bady allowed the officers to enter and, given the crime scene and profound presence of blood, they checked to see if anyone else was in the apartment. They eventually

discovered appellant lying on a bed in the bedroom with a firearm magazine near him. The officers awoke appellant and discovered he had a warrant.

{¶38} Detective Greaver testified when he entered Ms. Bady's apartment, she as well as appellant were already detained on a couch. He also observed a shell casing lying on the living room floor. The officers entered the apartment, and the detective immediately asked, "what happened here?" Appellant responded that he "popped a dude." Officer Weber then read appellant the *Miranda* warnings. Appellant indicated he understood his rights. The body camera footage from Detective Greaver indicated approximately eight to nine minutes elapsed before appellant was read *Miranda* warnings. Appellant was then taken to the Warren Police Department. Detective Greaver testified appellant was again Mirandized at the station and initialed a waiver form and a consent to search his apartment. A video submitted into evidence confirmed the detective's testimony.

{¶39} After the hearing, both the prosecuting attorney and defense counsel filed proposed findings of fact and conclusions of law. As they related to *Miranda*, defense counsel's proposed conclusions merely addressed the validity of appellant's waiver and what occurred once appellant was taken to the police station. Specifically, defense counsel's conclusions provided:

> In reviewing the totality of the circumstances surrounding his interview, Defendant did not make a valid waiver of his *Miranda* rights. Det. Greaver did not inquire into Defendant's age, experience, education, background or intelligence prior to explaining the waiver of his rights. He failed to have Defendant explain what the rights were that he was giving up or if he understood the consequences of giving them up. Det. Greaver did not have Defendant read the rights to him to ensure that Defendant even knew how to read. Greaver observed Defendant's behavior and failed to inquire as to

> whether Defendant was under the influence. Defendant did not make a valid waiver. Defendant's statement was not voluntarily given because he was not able to comprehend and waive his rights.

{¶40} In light of the foregoing, it would appear that appellant did not *specifically* challenge the pre-*Miranda* question by Detective Greaver in which the detective addressed both appellant and Ms. Bady asking, "what happened here?" It also appears appellant did not challenge the purported eight- to nine-minute gap in video footage which occurred prior to the issuance of the warnings. Although appellant generally alleged he was not properly advised of *Miranda* and did not effectively waive his rights prior to questioning, these points do not specifically address the arguments asserted on appeal. Moreover, the proposed findings and conclusions fail to mention the arguments asserted on appeal. A party cannot assert new arguments relating to the suppression of evidence for the first time on appeal. *State v. Niebauer*, 11th Dist. Ashtabula No. 2007-A-0097, 2008-Ohio-3988, ¶ 31. In this respect, appellant has forfeited his arguments.

{¶41} Assuming, however, appellant's motion and the representations in the proposed findings and conclusions were sufficient to preserve the arguments at issue, they would still lack merit.

{¶42} Appellate review of a motion to suppress presents a mixed question of law and fact. The trial court sits as the fact finder at the hearing and is best able to weigh the evidence and determine witness credibility. *State v. McGary,* 11th Dist. Trumbull No. 2006-T-0127, 2007-Ohio-4766, ¶ 20; *State v. Mills,* 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). Thus, we must accept the trial court's factual findings as true if supported by competent, credible evidence. *State v. Hatcher*, 11th Dist. Portage Nos. 2012-P-0077, 2012-P-0078, 2013-Ohio-445, ¶ 9; *State v. Retherford,* 93 Ohio App.3d 586, 592, 639

N.E.2d 498 (2d Dist.1994). Upon accepting the trial court's findings as true, an appellate court independently determines as a matter of law whether the applicable legal standard was satisfied. *Retherford* at 592.

{¶43} The Fifth Amendment to the United States Constitution provides that "[n]o person * * * shall be compelled * * * to be a witness against himself[.]" In order to protect this right, the United States Supreme Court, in *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), held that the prosecution may not use statements stemming from custodial interrogation, unless it demonstrates that procedural safeguards were taken to secure the defendant's privilege against self-incrimination.

{¶44} "*Miranda* warnings are intended to protect a suspect from the coercive pressure present during a custodial interrogation." *Cleveland v. Oles*, 152 Ohio St.3d 1, 2017-Ohio-5834, 92 N.E.3d 810, ¶ 9, citing *Miranda* at 469. "A custodial interrogation is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Oles* at ¶ 9, quoting *Miranda* at 444. "If a suspect provides responses while in custody without having first been informed of his or her *Miranda* rights, the responses may not be admitted at trial as evidence of guilt." *Oles* at ¶ 9, quoting *Miranda* at 479.

{¶45} "Any statement, question or remark which is 'reasonably likely to elicit an incriminating response' is an interrogation." *State v. Knuckles*, 65 Ohio St.3d 494, 495, 605 N.E.2d 54 (1992), quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

{¶46} Appellant first claims that he was subjected to custodial interrogation lasting approximately eight to nine minutes prior to receiving *Miranda* warnings. We conclude

there is no evidential basis for this contention. While it is unclear what occurred during the eight or nine minutes at issue, there is nothing in the record to suggest that appellant was questioned at all by officers during this timeframe. The approximate eight to nine minutes which preceded Detective Greaver's arrival at Ms. Bady's apartment were not played at the suppression hearing (likely because what occurred during that timeframe was not relevant to the issues before the court). And, even though defense counsel asked if any statements were made during that timeframe (to which Detective Greaver responded the only statement that was made by appellant was, "I popped him"), there was simply no evidence that officers engaged in any custodial interrogation of appellant prior to Detective Greaver's arrival. Appellant's contention lacks merit.

{¶47} Next, appellant contends that his statement, "I popped a dude", should have been suppressed as the product of a custodial interrogation because it was elicited without *Miranda* warnings. The state contends *Miranda* warnings were unnecessary because the statement was the result of an "on-scene" question wherein appellant was not in custody.

{¶48} When both custody and an interrogation are present, law enforcement officers must advise an individual of his constitutional rights to ensure that self-incriminating statements made by that individual are the result of his own free volition. *State v. Rivera-Carrillo*, 12th Dist. Butler No. CA2001-03-054, 2002 WL 371950, *2 (Mar. 11, 2002), citing *Miranda*, 384 U.S. at 457. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process typically does not constitute a custodial interrogation. *Miranda* at 477. This is because

such general questioning is only an attempt to elicit basic facts relative to an officer's investigation. *See State v. Rivera-Carrillo* at *3.

{¶49} Detective Greaver was clear that appellant was handcuffed and in the presence of police when he arrived at Ms. Bady's apartment. It is unquestionable that being handcuffed in police-officer presence deprived appellant of his "freedom of action in [a] significant way." Detective Greaver, however, testified on direct examination that, as he entered the room where appellant was detained, he asked, "what happened here?" The detective's question was basic and general. It reasonably represents a simple, fact-gathering question posed to obtain some understanding of the circumstances. In this respect, we conclude the question was a reasonable, open-ended, on-scene question that was neither designed, nor reasonably likely to elicit an incriminating response.

{¶50} It bears noting that even if the statement elicited from Detective Greaver's initial inquiry could be seen as running afoul of *Miranda*, a conclusion we do not endorse, the prosecutor did not use it at trial. Hence, assuming the statement worthy of suppression, appellant would have experienced no prejudice from the court's failure to suppress the statement and therefore any error would be harmless. Nevertheless, because we conclude the officer's inquiry was a legitimate, on-scene question, the trial court did not err in denying suppression of appellant's subsequent response.

{¶51} Appellant next asserts his waiver of his *Miranda* rights after his statement in the apartment was a product of coercive police presence and not voluntary. We need not evaluate whether the surrounding circumstances of his initial waiver were sufficient to support appellant's claim because, once he was taken to the police station, Detective Greaver again Mirandized appellant and obtained a written waiver of appellant's rights.

{¶52} A review of the interview at the police department demonstrates the detective did not engage in any overreaching tactics to obtain the waiver and appellant voluntarily, without hesitation, stated he understood the rights he was waiving and initialed the waiver form. Although appellant was distraught during the interview, he was lucid and responsive to all questions. There is nothing to suggest the waiver was a product of police coercion or an otherwise involuntary act on appellant's behalf.

{¶53} Appellant's first assignment of error lacks merit.

B. Alleged Prejudicial Joinder and Failure to Bifurcate

{¶54} Appellant's second assignment of error provides:

{¶55} "The appellant was denied of his right to a fair trial when the trial court failed to bifurcate factual elements of the offenses and failed to give relief from misjoinder of separate, factually distinct crimes."

{¶56} Under this assignment of error, appellant contends the trial court erred in denying his motion to bifurcate the having weapons while under disability offenses and motion to sever the felonious assault and murder offenses. He claims he was prejudiced by the joinder because its sole purpose was to bolster weak cases using evidence to support stronger cases and attack his character by implying he had a predisposition to criminal behavior.

> "Pursuant to Crim.R. 8(A), 'two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offense charged, whether felonies or misdemeanors or both, are of the same or similar character * * *.' Generally, joinder of offenses is liberally permitted in order to conserve judicial resources, prevent incongruous results in successive trials, or to diminish inconvenience to witnesses."

State v. Quinones, 11th Dist. Lake No. 2003-L-015, 2005-Ohio-6576, ¶ 35, citing *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981). The law generally favors joinder of multiple offenses in a single trial. *State v. Franklin*, 62 Ohio St.3d 118, 122, 580 N.E.2d 1 (1991).

{¶57} Pursuant to Crim.R. 14, it may be necessary to separate trials to prevent prejudice. *State v. Brinkley,* 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶ 29. Crim.R. 14, provides, in relevant part: "If it appears that a defendant * * * is prejudiced by a joinder of offenses * * * for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts * * *."

{¶58} "When a defendant claims that joinder is improper, he must affirmatively show that his rights have been prejudiced." (Citations omitted.) *Quinones* at ¶ 38. To establish prejudice, "[t]he accused must provide the trial court with sufficient information demonstrating that he would be deprived of the right to a fair trial if joinder is permitted." *Id.,* citing *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). "The state may negate the defendant's claim of prejudice by demonstrating either of the following: (1) that the evidence to be introduced relative to one offense would be admissible in the trial on the other, severed offense, pursuant to Evid.R. 404(B); or (2) that, regardless of the admissibility of such evidence, the evidence relating to each charge is simple and direct." *Quinones* at ¶ 39, citing *Franklin* at 122.

{¶59} The standard for granting or denying separate trials is an abuse of discretion, which should be so exercised as to prevent injustice and secure the applicant of his right to a fair trial. *See, e.g., State v. Brunelle-Apley*, 11th Dist. Lake No. 2008-L-014, 2008-Ohio-6412, ¶ 108. "'[T]he term "abuse of discretion" is one of art, connoting

judgment exercised by a court, which does not comport with reason or the record.' *State v. Underwood,* 11th Dist. Lake No. 2008-L-113, 2009-Ohio-2089, ¶ 30, citing *State v. Ferranto,* 112 Ohio St. 667, 676-678, 3 Ohio Law Abs. 187, 3 Ohio Law Abs. 332, 148 N.E. 362 (1925). [A]n abuse of discretion is the trial court's "'failure to exercise sound, reasonable, and legal decision making.'" *State v. Beechler,* 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11.

{¶60} Initially, although appellant filed the motions at issue and renewed the motions before trial, he did not renew the motions after the close of the state's evidence. "This court has held that when a defendant fails to renew a motion to sever at the conclusion of the presentation of all of the evidence at trial * * * it is [forfeited] and the matter is reviewed for plain error." *State v. Jackson*, 11th Dist. Lake No. 2017-L-140, 2018-Ohio-3241, ¶ 22, citing *State v. Appenzeller*, 11th Dist. Lake No. 2006-L-258, 2008-Ohio-7005, ¶ 75-76. Because appellant's counsel failed to renew the motions to sever and bifurcate at the conclusion of the presentation of all evidence, he has forfeited the argument, save plain error. "Plain error exists when it can be said that but for the error, the outcome of the trial would clearly have been otherwise." (Citation omitted.) *State v. Issa*, 93 Ohio St.3d 49, 56, 752 N.E.2d 904 (2001).

{¶61} Appellant generally asserts that the trial court erred because it permitted the jury to find guilt based on character evidence and allowed the state to use evidence of stronger cases to prove otherwise weak cases. Even assuming this allegation was sufficient to meet appellant's initial burden, the trial court did not err in concluding that the evidence for each count was simple and direct.

{¶62} "Evidence is 'simple and direct' if the jury is readily capable of separating the proof required for each offense, if the evidence is not likely to confuse jurors, if the evidence is straightforward, and if there is little danger that the jury would improperly consider testimony regarding one offense as corroborative of the other." *State v. Jones,* 11th Dist. Lake No. 2019-L-056, 2020-Ohio-3852*,* ¶ 42, citing *State v. Freeland,* 4th Dist. Ross No. 12CA003352, 2015-Ohio-3410, ¶ 14; *see also State v. Goodner*, 195 Ohio App.3d 636, 2011-Ohio-5018, 961 N.E.2d 254, ¶ 44 (2d Dist.).

{¶63} In this matter, the charges involved four separate and discrete incidents. The first incident involved an assault against Mr. Smith which took place in the lobby of the 700 Buckeye St. apartment building in the Riverview Apartments. The state presented video evidence of the incident and, even though Mr. Smith did not identify appellant as his assailant, a .380 casing was found in the lobby by investigators. That casing matched a test-fired casing from a .380 firearm seized from appellant on November 21, 2021. Further, the individual in the video bears a strong resemblance to appellant. The individual in the video, which has particularly clear resolution, is seen shooting Mr. Smith. This allowed jurors to compare appellant as he appeared in court against the individual depicted in the video.

{¶64} The second incident occurred several days later in the same apartment complex. Warren Police responded to a "shots-fired" call which eventuated in appellant's arrest and the seizure of a .380 firearm. This firearm was forensically linked to the felonious assault offense which occurred just days earlier. The third incident occurred in the same apartment complex and involved video evidence of appellant waving a silver/chrome firearm outside his neighbor's apartment. As he stands outside the

apartment, appellant draws the weapon several times and aims it in the direction of the elevator and/or wall of the building's common area.

{¶65} The final incident occurred in the same apartment complex and ended in Mr. Owens' homicide. Mr. Owens was killed by a .380 bullet to the chest. After following a trail of blood from the victim to Ms. Bady's apartment, investigators located appellant with a .380 magazine between his legs. And with the assistance of Ms. Bady, who testified appellant had the firearm prior to and after the shooting, investigators found a .380 handgun in a baseboard heating unit in Ms. Bady's bedroom, where appellant was found.

{¶66} The indictment alleged offenses occurring on four separate days; they involved two different Davis Industries .380 firearms and two different victims. The video evidence and witness testimony provided the jury with the ability to either specifically identify appellant as the offender in each crime or strongly link appellant to each of the charges alleged in the indictment. We therefore conclude the trial court properly found the evidence was simple and direct.

{¶67} Moreover, even though the trial court did not analyze the second aspect of the joinder test, we conclude there was sufficient, reliable evidence to justify joinder under Evid.R. 404(B). Pursuant to Evid.R. 404(B), other acts evidence may be admissible as proof of "motive, opportunity, intent, preparation, plan, knowledge, identity," or absence of mistake or accident. "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[s] in question." *State v. Lowe*, 69 Ohio St.3d 527, 634 N.E. 2d 616 (1994), paragraph one of the syllabus.

{¶68} Here, the joinder of the offenses reveals a common modus operandi in that each crime involved two, separate Davis Industries .380 firearms and they occurred in the same apartment complex over a short time span of 13 days. Under the circumstances, the crimes were sufficiently connected to help the state establish the identity of the offender in each case; namely, appellant.

{¶69} In light of the foregoing, we conclude the trial court did not abuse its discretion in overruling appellant's motions to bifurcate and relief from prejudicial joinder.

{¶70} Appellant's second assignment of error lacks merit.

C. Jury Instruction on Self-Defense

{¶71} Appellant's third assignment of error provides:

{¶72} "The appellant was denied his right to a fair trial when the trial court failed to give a jury instruction of self-defense."

{¶73} "The court must give all instructions that are relevant and necessary for the jury to weigh the evidence and discharge its duty as the factfinder." *State v. Joy*, 74 Ohio St.3d 178, 181, 657 N.E.2d 503 (1995), citing *State v. Comen*, 50 Ohio St.3d 206, 553 N.E.2d 640 (1990), paragraph two of the syllabus. Alternatively, a trial court need not instruct the jury where there is no evidence to support the instruction at issue. *State v. Mankin*, 10th Dist. Franklin No. 19AP-650, 2020-Ohio-5317, ¶ 34, quoting *Murphy v. Carrollton Mfg. Co.*, 61 Ohio St.3d 585, 591, 575 N.E.2d 828 (1991). Therefore, in reviewing a record to determine whether there is sufficient evidence to support the issuance of an instruction, "an appellate court should determine whether the record contains evidence from which reasonable minds might reach the conclusion sought by

the instruction." *Murphy* at 591, 575 N.E.2d 828, citing *Feterle v. Huettner*, 28 Ohio St.2d 54, 275 N.E.2d 340 (1971), syllabus.

{¶74} A defendant charged with an offense involving the use of force has the burden of producing legally sufficient evidence that his or her use of force was in self-defense. *State v. Messenger*, --- Ohio St.3d ----, 2022-Ohio-4562, --- N.E.3d ----, ¶ 25. "Similar to the standard for judging the sufficiency of the state's evidence, if the defendant's evidence and any reasonable inferences about that evidence would allow a rational trier of fact to find all the elements of a self-defense claim when viewed in the light most favorable to the defendant, then the defendant has satisfied the burden." *Id.*, citing *State v. Filiaggi*, 86 Ohio St.3d 230, 247, 714 N.E.2d 867 (1999).

{¶75} In this case, after the state rested, appellant did not advance any evidence in his defense. To the extent the sufficiency standard requires a reviewing court to assess whether the party with *the burden of production* met its burden, and appellant did not produce any evidence, it follows that appellant was not entitled to an instruction on self-defense. In this basic respect, appellant's argument lacks merit.

{¶76} Despite this fundamental flaw, appellant, via counsel, argued at trial that the state's production of the interview between appellant and Detective Greaver was sufficient to justify the instruction. In the video, appellant claimed Mr. Owens arrived at Ms. Bady's apartment with a firearm, pointed it at appellant, and in an attempt to defend himself, he shot Mr. Owens with the firearm. The trial court correctly determined appellant's claimed account, without more, was insufficient to justify the instruction.

{¶77} "The state need not disprove an affirmative defense unless evidence is presented that is sufficient to raise that defense. 'A bare assertion by the defendant that

he acted in self-defense will not bring the affirmative defense of self-defense into issue in the trial.'" *State v. Jacinto*, 2020-Ohio-3722, 155 N.E. 3d 1056, ¶ 47, (8th Dist.), quoting *State v. Gideons*, 52 Ohio App.2d 70, 73, 368 N.E.2d 67 (8th Dist.1977). "Coupled with such an assertion must be supporting evidence from whatever source introduced of a nature and quality sufficient to raise the defense and which '* * * if believed, would under the legal tests applied to a claim of self-defense permit a [jury to find] reasonable doubt as to guilt * * *.'" *Gideons* at 73, quoting *State v. Robinson*, 47 Ohio St.2d 103, 113, 351 N.E.2d 88 (1976).

{¶78} Beyond the evidence of his video interview, appellant cites to the testimony of various witnesses presented by the state in order to establish sufficient evidence to merit the self-defense instruction. He notes that Ms. Bady testified that Mr. Owens stopped to retrieve something from his apartment before the shooting, apparently implying Mr. Owens retrieved a weapon. Ms. Bady's testimony, however, reflected that she did not see Mr. Owens with a weapon or a firearm; she also testified she observed appellant with the firearm in question throughout the morning of December 1, 2021, the date of the homicide.

{¶79} Appellant also cites Detective Greaver's testimony that reports were filed on the day of the murder of people fighting on the ninth floor, the floor where Mr. Owens was shot. This testimony, however, does not establish the alleged fight was between appellant and Mr. Owens, let alone independent, corroborative evidence that appellant was acting in self-defense when he shot Mr. Owens.

{¶80} Finally, appellant cites Dr. Sterbenz's testimony that a photo of the crime scene showed the apartment in disarray, indicating there may have been a physical

altercation. Dr. Sterbenz, however, also testified that, other than the gunshot wound which caused his death, there was no physical evidence on Mr. Owens' body that he had actually been in a physical altercation.

{¶81} The testimony cited by appellant does not provide supportive evidence sufficient to justify a self-defense instruction. If a defendant could blankly assert, without corroborative supporting evidence, that his or her use of force, which is the basis for a criminal charge, was a result of self-defense, any and all defendants so charged would be entitled to a self-defense instruction without any evidence beyond the self-serving claim. Appellant failed to provide any corroborating evidence to support his jury-instruction request. And, as discussed above, to allow the instruction in this case would ignore the rule that *appellant* had the burden of producing evidence sufficient to justify the instruction. Given the evidence, we decline to accept appellant's arguments.

{¶82} Appellant's third assignment of error lacks merit.

D. Sufficiency of the Evidence of November 28, 2021 Incident

{¶83} Appellant's fourth assignment of error provides:

{¶84} "The state of Ohio failed to present sufficient evidence to support a conviction for having a weapon under disability on November 28, 2021 when no evidence of an operable weapon was presented."

{¶85} Appellant maintains the state failed to establish that he possessed an operable firearm justifying the conviction for having a weapon under disability on November 28, 2021. We do not agree.

{¶86} A "sufficiency" argument raises a question of law as to whether the prosecution offered some evidence concerning each element of the charged offense.

State v. Windle, 11th Dist. Lake No. 2010-L-033, 2011-Ohio-4171, ¶ 25. "[T]he proper inquiry is, after viewing the evidence most favorably to the prosecution, whether the jury could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Troisi,* 179 Ohio App.3d 326, 2008-Ohio-6062, 901 N.E.2d 856, ¶ 9 (11th Dist.). "Sufficiency of the evidence tests the burden of production." *State v. Rice,* 2019-Ohio-1415, 135 N.E. 3d 309, ¶ 65 (11th Dist.).

{¶87} "Circumstantial evidence and direct evidence inherently possess the same probative value." *State v. Fasline*, 11th Dist. Trumbull No. 2014-T-0004, 2015-Ohio-715, ¶ 39, citing *State v. Biros*, 78 Ohio St.3d 426, 447, 678 N.E.2d 891 (1997). "Circumstantial evidence has been defined as testimony not grounded on actual personal knowledge or observation of the facts in controversy, but of other facts from which inferences are drawn, showing indirectly the facts sought to be established." *State v. Payne*, 11th Dist. Ashtabula No. 2014-A-0001, 2014-Ohio-4304, ¶ 22, citing *State v. Nicely*, 39 Ohio St.3d 147, 150, 529 N.E.2d 1236 (1988). "An inference is 'a conclusion which, by means of data founded upon common experience, natural reason draws from facts which are proven.'" *State v. Windle*, ¶ 34, quoting *State v. Nevius*, 147 Ohio St. 263, 274, 71 N.E.2d 258 (1947). "It consequently follows that 'when circumstantial evidence forms the basis of a conviction, that evidence must prove collateral facts and circumstances, from which the existence of a primary fact may be rationally inferred according to common experience.'" *State v. Armstrong*, 11th Dist. Portage No. 2015-P-0075, 2016-Ohio-7841, ¶ 22, quoting *Windle*, at ¶ 34.

{¶88} On the date in question, the appellant's neighbor, Mr. Rahim, was alerted by his Ring-doorbell camera that someone was waving a firearm in front of his apartment.

A review of the footage reveals appellant waving a small silver/chrome firearm, acting as though he was going to fire the weapon. Three days after this incident, Mr. Owens was shot and killed with a silver/chrome .380 firearm. The firearm, which was recovered from Ms. Bady's bedroom, was test-fired by BCI forensic scientist, Mr. Barr, and its operability was confirmed. Viewed in a light most favorable to the prosecution, the jury could draw the reasonable inference that the silver/chrome firearm appellant was waving on November 28 was the same silver/chrome firearm recovered from Ms. Bady's apartment and used in the murder. The state presented sufficient, credible circumstantial evidence to support the conviction at issue.

{¶89} Appellant's fourth assignment of error lacks merit.

III. Conclusion

{¶90} The state presented adequate evidence to support the trial court's denial of appellant's motion to suppress based upon his claim that he was denied the protections of *Miranda*. Further, appellant failed to establish prejudice as it relates to the trial court's denial of his motion to sever and motion for relief from prejudicial joinder *and*, even if he met his burden of establishing prima facie prejudice, the state adduced sufficient, credible evidence that the evidence of each crime was simple and direct and/or the evidence met the criteria of Evid.R. 404(B). Additionally, appellant failed to meet his burden of production vis-à-vis his request for a self-defense jury instruction. Finally, the state produced sufficient, credible evidence of appellant's guilt, beyond a reasonable doubt, of the crime alleged in the November 21, 2021 incident.

{¶91} For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J., concurs,

JOHN J. EKLUND, P.J., concurs in judgment only.