

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

STATE OF OHIO

Appellee

v.

SHAKING ADONTA JONES

Appellant

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C.A. No. 30626

Trial Court Case No. 2024 CR 00552/1

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 2, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MICHAEL L. TUCKER, JUDGE

EPLEY, J., and HUFFMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30626

MICHAEL O. MILLS, Attorney for Appellant
ANDREW T. FRENCH, Attorney for Appellee

TUCKER, J.

{¶ 1} Shaking Adonta Jones appeals from his conviction on charges of murder and having a weapon while under disability along with multiple specifications.¹

{¶ 2} Jones contends the trial court erred in overruling his motion to suppress statements he made to police, a photo identification of him by a co-defendant, and evidence seized pursuant to search warrants. He also challenges the trial court's overruling of a motion in limine to exclude a picture from his Facebook page. He additionally argues that his murder conviction is not supported by legally sufficient evidence and is against the weight of the evidence. He then claims the trial court erred in failing to merge murder and having a weapon while under disability as allied offenses of similar import. He further asserts that multiple firearm specifications should have merged. Finally, he alleges ineffective assistance of counsel based on his trial attorney's failure to seek severance under Crim.R. 14.

{¶ 3} We find Jones' arguments to be without merit and affirm the trial court's judgment.

I. Background

{¶ 4} A grand jury indicted Jones on two counts of murder, two counts of felonious assault, and one count of having a weapon while under disability. The murder and felonious assault charges included three-year firearm specifications. These charges stemmed from

1. A jury found Jones guilty of other offenses that merged into those set forth above as allied offenses of similar import.

the shooting death of Darnell Pate in a bar's parking lot. A second indictment added an aggravated robbery charge with a three-year firearm specification. This incident allegedly occurred in another parking lot less than an hour before Pate was shot.

{¶ 5} Following the indictments, Jones moved to suppress his statements to the police, evidence obtained from cell phone and social media accounts, a photo identification of him, and evidence seized during searches of his sister's apartment and his vehicle. The trial court did not suppress any of the evidence. Jones then obtained severance of the weapon-under-disability charge and agreed to have it tried to the bench. The other charges and specifications were tried by a jury in August 2025. The jury found Jones not guilty of aggravated robbery but guilty on the charges and specifications related to the shooting of Pate. The trial court separately found him guilty of having a weapon while under disability.

{¶ 6} Regarding Pate's death, the State's evidence at trial established that he was shot and killed in the parking lot of Napoleon's bar on Germantown Pike. The shooting occurred around 2:30 a.m. on January 29, 2024. After finishing his work at the bar, Pate walked to his Ford Expedition in the parking lot and got into the driver's seat. Seconds later, a person exited a dark-colored Hyundai Tucson parked behind the Ford, opened the passenger-side door of Pate's vehicle, and shot Pate three times. The shooter returned to the passenger seat of the Hyundai, which fled the scene. Shortly thereafter, police discovered the abandoned Hyundai about a half of a mile away, still running but stopped against a fence. The Hyundai had been reported stolen days earlier. Touch DNA samples were collected from items inside the Hyundai, including a green sweatshirt. Investigators additionally obtained fingerprints from the Hyundai and the Ford. They also found three nine-millimeter shell casings inside the Ford.

{¶ 7} Jones became a suspect when his prints were found to match prints lifted from both Pate's vehicle and the Hyundai and when DNA from the green sweatshirt found in the Hyundai statistically matched Jones' DNA. Approximately two weeks after the shooting, police arrested Jones at his sister's apartment. Two nine-millimeter shell casings were found outside the apartment near the front door. Ballistics testing confirmed that they had been fired from the same handgun that discharged the three nine-millimeter shell casings found inside the victim's vehicle. Finally, cell-site location data established that a cellphone Jones was known to use "pinged" on cell towers in a pattern consistent with his involvement in the shooting. The pinging demonstrated that the cellphone had been near the location of Pate's murder and that it then moved from the bar's parking lot to where police found the abandoned Hyundai.

{¶ 8} Jones was found guilty of five felonies (two counts of murder, two counts of felonious assault, and one count of having a weapon while under disability) and four three-year firearm specifications. At sentencing, the trial court applied merger and imposed a sentence of 15 years to life in prison on one count of murder and a consecutive three-year prison term for having a weapon while under disability. It also sentenced him on all four of the firearm specifications, ordering two of those three-year sentences to be served consecutively to the sentences on the substantive offenses and ordering two of the three-year sentences to be served concurrently. Finally, the trial court ordered the sentence in this case to be served consecutively to the 18-month sentence imposed in an earlier case. Jones timely appealed, advancing five assignments of error.

II. Analysis

{¶ 9} The first assignment of error states:

THE TRIAL COURT ERRED IN DENYING THE APPELLANT’S MOTION TO SUPPRESS.

{¶ 10} Jones contends the trial court erred in overruling his pretrial motion to suppress evidence after a hearing. The motion addressed statements he made to police, a photo identification made by a co-defendant, his standing to challenge searches conducted with warrants, and the sufficiency of search warrant affidavits.

{¶ 11} On appeal, Jones maintains that his statements to police were coerced and obtained in violation of his right to counsel. He asserts that the photo identification was unduly suggestive and unreliable. He also claims standing to challenge search warrants for his sister’s apartment and a cellphone linked to him at trial. Finally, he contends warrants for the apartment and cellphone were unsupported by probable cause.

{¶ 12} “Appellate review of a motion to suppress presents a mixed question of law and fact.” *State v. Burnside*, 2003-Ohio-5372, ¶ 8. When ruling on a motion to suppress, “the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses.” *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). “Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). “Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist. 1997).

{¶ 13} We quickly may dispose of Jones’ arguments addressing statements to police and the photo identification by a co-defendant. Jones did not make incriminating statements or admissions that were used against him at trial. Nor did the State introduce the challenged photo identification at trial. The State also did not introduce evidence from two of three cellphones mentioned in the suppression hearing. Where evidence sought to be suppressed was not used at trial, any error in a trial court’s suppression ruling necessarily is harmless. *State v. Thomas*, 2015-Ohio-4121, ¶ 9 (2d Dist.).

{¶ 14} Regarding the search of Jones’ sister’s apartment, surveillance established his presence inside the residence on February 14, 2024, after fingerprints and other evidence had led to his identification as a suspect in the shooting of Pate. Upon being advised of Jones’ location, police promptly arrived and arrested him at the apartment. That same day, they obtained a search warrant for the premises.

{¶ 15} Jones challenged the validity of the resulting search of the apartment. The State contested his standing. In finding the State’s argument persuasive, the trial court noted that Jones bore the burden of establishing both a subjective and an objectively reasonable expectation of privacy in his sister’s apartment. The trial court then reasoned: “In this matter, Defendant admits in his post-hearing brief that the residence . . . was his sister’s residence. At the motion to suppress hearing, the Defendant did not testify or present any witnesses that he was an overnight guest to establish a reasonable expectation of privacy in his sister’s residence. As a result, he lacks standing to assert a challenge to the search”

{¶ 16} Without more, Jones’ mere presence inside his sister’s apartment did not establish his standing to challenge the search. *Minnesota v. Carter*, 525 U.S. 83, 90 (1998) (recognizing that “an overnight guest in a home may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not”).

{¶ 17} Even assuming, arguendo, that Jones stayed at the apartment and had standing, a search warrant affidavit for the apartment established probable cause. The affidavit recited details of the shooting of Pate. It referenced fingerprint evidence making Jones a suspect in the murder, and it described his arrest at the apartment earlier that day. It sought authorization to search the apartment for cellphones, tablets, computers, firearms, firearm accessories, ammunition, shell casings, clothing associated with the offenses, and instrumentalities associated with the offenses. In our view, the issuing judge had a substantial basis for concluding that probable cause existed for the search. *Illinois v. Gates*, 462 U.S. 213, 238-239 (1983). Finally, we note that two nine-millimeter shell casings appear to have been the only meaningful evidence obtained during the search. Those shell casings were found abandoned on the ground *outside* of the apartment.

{¶ 18} The only other search warrant involving evidence used at trial concerned cellphone records and cell-site tower data for cellphone number xxx-xxx-9973. The affidavit for this search warrant sought access to T-Mobile records and data associated with the phone number, not the cellphone itself. Unlike the search warrant for Jones' sister's apartment, the State did not contest his standing to challenge the search warrant for records and data linked to number xxx-xxx-9973. During the suppression hearing, the State explained that it "would be raising the issue of standing" only with respect to State's exhibit 5, which was the search warrant for the apartment. Given the State's failure to challenge Jones' standing regarding the search warrant for number xxx-xxx-9973, he had no obligation during the suppression hearing to establish standing. *State v. Wintermeyer*, 2019-Ohio-5156, ¶ 9, 12-16 (recognizing that Fourth Amendment standing is not a "jurisdictional question" and that it must be established by the defendant only when it is contested by the State).

{¶ 19} The affidavit for this search warrant included details of the shooting of Pate and referenced fingerprint evidence making Jones a suspect. Regarding number xxx-xxx-9973, however, the affidavit contained little information linking it to Jones. The affidavit identified that phone number as one of three numbers Jones had added to his Montgomery County jail account following his arrest. Adding the numbers to his account gave the users of those phone numbers the ability to communicate with him in jail. The only other information in the affidavit about number xxx-xxx-9973 was paragraph Q, which stated:

This affiant found through Accurint the number [xxx-xxx-9973] is registered through T-Mobile to [D.P.] at 1948 Gant Dr. [D.P.] is known to be the girlfriend of Sha'king Jones and Sha'king is known to stay at her address with her. This affiant has conducted numerous criminal offenses where the suspect will utilize cell phone numbers which are provided to them through the phone accounts of girlfriends, or spouses, in order to conceal or hide their identity or locations from Law Enforcement.

{¶ 20} In short, the affidavit linked number xxx-xxx-9973 with Jones' girlfriend and suggested, based on the affiant's experience, that Jones may have used her phone in connection with the murder of Pate. Without more, the inference suggested by the affidavit was too speculative and lacked sufficient supporting facts to establish a fair probability that records for number xxx-xxx-9973 would contain information related to Pate's murder. Although the State presented additional evidence at trial linking Jones to number xxx-xxx-9973 and establishing his use of that number, we cannot consider such evidence when reviewing the trial court's suppression ruling. When determining the existence of probable cause, we are limited to examining information found within the "four corners" of the affidavit. *State v. Spells*, 2024-Ohio-6052, ¶ 19 (2d Dist.).

{¶ 21} Nevertheless, we conclude that the cell records at issue were not subject to suppression. The good-faith exception to the Fourth Amendment's exclusionary rule permits the use of evidence obtained under a warrant supported by a deficient search warrant affidavit if police acted in objectively reasonable reliance on the warrant. *State v. Tarver*, 2025-Ohio-2167, ¶ 11 (2d Dist.), citing *State v. George*, 45 Ohio St.3d 325, 330 (1989). The exception applies if the affiant did not knowingly mislead the issuing judge, the issuing judge did not wholly abandon the judicial role, the affidavit was not so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable, and the warrant was not so facially deficient that police could not reasonably presume its validity. *Id.*, citing *State v. Ojezua*, 2020-Ohio-303, ¶ 44 (2d Dist.), citing *United States v. Leon*, 468 U.S. 897, 923 (1984). We are persuaded that these requirements were met in the present case and that the officer who obtained the cell records acted reasonably in relying on the issuing judge's warrant. The first assignment of error is overruled.

{¶ 22} The second assignment of error states:

THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION IN LIMINE.

{¶ 23} Jones challenges the trial court's overruling of a motion in limine to preclude the State from using at trial a Facebook picture of someone wearing a mask and holding a firearm. The State asserted below that it was Jones' Facebook profile picture. On appeal, he claims that the picture unfairly prejudiced him and lacked probative value because the person depicted could not be identified. He also asserts that the State's use of the picture required impermissible "inference stacking."

{¶ 24} Jones' argument concerns State's trial exhibit 196, a picture of a person wearing a distinctive silver and black mask while brandishing a handgun. Prior to trial, the

picture was redacted to cover the weapon. Investigators discovered the picture on Jones' Facebook page. After Jones' unsuccessful motion in limine, he renewed his objection at trial. The trial court overruled the objection, reasoning that the picture was admissible as circumstantial evidence of identity.

{¶ 25} Upon review, we see no abuse of discretion in the trial court's evidentiary ruling. As an initial matter, we note that the picture was most relevant to the aggravated robbery charge on which Jones was acquitted. The alleged victim testified that a masked assailant robbed him at gunpoint as he was leaving the Palms Lounge in Harrison Township. Investigators later obtained a security video depicting a dark-colored Hyundai Tucson sitting in the parking lot of the Palms Lounge near the time of the robbery. Enlarged photographs generated from the video show a person sitting in the front passenger seat of the Hyundai. Although details are hard to see, the jury reasonably could have determined that the person sitting in the passenger seat was wearing a two-toned, black and silver mask. Although nothing definitively established that Jones was the masked person in the Facebook picture or that the same mask was worn in the security video, the trial court acted within its discretion in finding the Facebook image relevant and admissible as circumstantial evidence of Jones' identity as the perpetrator.

{¶ 26} As for inference stacking, the rule prohibiting the "stacking" of one inference upon another "has very limited application." *State v. Whiteside*, 2003-Ohio-3030, ¶ 46 (2d Dist.), quoting *State v. King*, 1995 WL 324640, *3 (2d Dist. May 17, 1995). It provides that "[a]n inference which is based solely and entirely upon another inference *and which is unsupported by any additional fact or another inference from other facts* is an inference upon an inference and is universally condemned." (Emphasis added.) *Hurt v. Charles J. Rogers Transp. Co.*, 164 Ohio St. 329, 333 (1955).

{¶ 27} For the mask worn by the Hyundai's passenger to have probative value as to identity, the jury needed to infer that Jones was wearing it. To make that inference, the jury first needed to infer that he was wearing the same mask in the Facebook picture. Therefore, the jury was required to "stack" inferences. Notably, however, the necessary "inference upon an inference" was supported by other evidence. As it pertains to his murder conviction, Jones' identity as the passenger in the Hyundai was supported by his fingerprints being found in the Hyundai, his DNA being found on clothing left in the Hyundai, and cell-site location data establishing that a cellphone linked to him was in the immediate vicinity of the parking lot where Pate was shot and that the cellphone then moved to where the Hyundai was abandoned. Because the inference that Jones was the passenger in the Hyundai was not based solely and entirely on an inference that he was wearing a mask on his Facebook page, we see no violation of the prohibition against inference stacking. The second assignment of error is overruled.

{¶ 28} The third assignment of error states:

THE STATE OF OHIO FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION FOR R.C. 2925.22(A) AND THE APPELLANT'S CONVICTION WAS AGAINST THE WEIGHT OF THE EVIDENCE.

{¶ 29} Jones' stated assignment of error challenges the legal sufficiency and manifest weight of the evidence to sustain a conviction for using deception to obtain a dangerous drug in violation of R.C. 2925.22(A), which has nothing to do with this case. His substantive argument addresses his convictions for murder in violation of R.C. 2903.02(B) and felonious assault in violation of R.C. 2903.11(A)(1).

{¶ 30} Jones argues that the State failed to prove his identity as the person who killed Pate. He notes the absence of a confession or any “incriminating statements” identifying him as the shooter. He stresses a detective’s admission that at least two people could have been in the Hyundai Tucson. He also claims that the detective initially did not think the person seen on video firing the shots matched Jones’ stature or build. Jones minimizes the strength of the State’s case, asserting that it relied on cellphone records, a partial print, shell casings, and DNA evidence found in the abandoned Hyundai.

{¶ 31} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. The relevant inquiry is 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. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 32} Our analysis is different when reviewing a manifest-weight argument. When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness 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. Thompkins*, 78 Ohio St.3d 380, 387 (1997). A judgment should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶ 33} With these standards in mind, we reject Jones’ legal-sufficiency and manifest-weight challenges. The record contains legally sufficient evidence to support a finding that he killed Pate, and such a finding is not against the weight of the evidence. A detective did testify that at least two people were in the Hyundai at the time of the shooting. He identified them as Jones and a co-defendant named Julien Swindle. The State’s theory was that Jones shot Pate and returned to the Hyundai and then Swindle drove Jones away from the scene. As for Jones not matching the build or stature of people seen in the Hyundai, the detective explained that the Hyundai had been stolen days earlier and that video footage showed that other individuals not matching Jones’ physique had entered and exited the vehicle and had used it to commit other crimes. This fact did not negate the State’s theory that Jones and Swindle subsequently used the same stolen Hyundai in the shooting of Pate. The detective explained that the vehicle had “changed hands multiple times.”

{¶ 34} Although Jones seeks to minimize the strength of the State’s case, the circumstantial evidence of his guilt was strong. DNA evidence with a strong statistical match to Jones was found on a sweatshirt left in the abandoned Hyundai. His prints were lifted from both the Hyundai and Pate’s Ford Expedition. Nine-millimeter shell casings found just outside the apartment where police arrested Jones matched shell casings found inside Pate’s vehicle. Finally, cell-site location data established that cellphones linked to Jones and Swindle “pinged” on cell towers in the immediate vicinity of the parking lot where Pate was shot and that the cellphones then moved to where the Hyundai was abandoned. Viewing the evidence in a light most favorable to the State, we find legally sufficient evidence to support Jones’ convictions. The convictions also are not against the weight of the evidence. The jury did not clearly lose its way and create a manifest miscarriage of justice. The

evidence does not weigh heavily against the convictions. The third assignment of error is overruled.

{¶ 35} The fourth assignment of error states:

THE TRIAL COURT ERRED IN IMPOSING AN UNLAWFUL SENTENCE.

{¶ 36} Jones contends the trial court erred in imposing separate sentences for murder and having a weapon while under disability. He argues that they were allied offenses of similar import and subject to merger under R.C. 2941.25. He also claims the trial court erred in imposing multiple consecutive and concurrent sentences on four firearm specifications. Because three underlying felony counts were merged, he argues that three corresponding firearm specifications should have merged at sentencing.

{¶ 37} “[W]hen determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.” *State v. Ruff*, 2015-Ohio-995, ¶ 31. In considering these questions, we are limited to plain-error review because Jones did not argue in the trial court that murder and having a weapon while under disability were subject to merger. While claiming that merger applied to certain other offenses, he simply requested concurrent sentences for murder and having a weapon while under disability. “Plain error requires the existence of an obvious error and a reasonable probability that it affected the outcome of the proceeding.” *State v. Smith*, 2025-Ohio-2086, ¶ 47 (2d Dist.).

{¶ 38} Upon review, we see no plain error in the trial court's failure to merge murder and having a weapon while under disability. In support of his argument, Jones cites *State v. Fairman*, 2011-Ohio-6489 (2d Dist.). There we found plain error in the trial court's failure to merge felonious assault and having a weapon while under disability. Applying the allied-offense test articulated in *State v. Johnson*, 2010-Ohio-6314, we reasoned:

Fairman's conviction for Having Weapons Under Disability was based upon his possession of a gun after having previously been convicted of Robbery. His conviction for Felonious Assault was based upon his use of that same gun to inflict serious physical harm upon Arnold. Where, as here, the defendant uses the same firearm or dangerous ordnance in committing both crimes, it is certainly possible to commit the crime of Having a Weapon Under Disability with the same conduct as Felonious Assault. Under the facts of this case, Fairman's act of using a gun to commit Felonious Assault necessarily constituted his commission of Having Weapons Under Disability. Furthermore, the crimes were not committed separately or with a separate animus because the evidence shows that Fairman obtained the gun with the immediate intent of shooting Arnold; he had no separate animus in acquiring possession of the gun. Therefore, we conclude that Fairman's Felonious Assault and Having Weapons Under Disability convictions are allied offenses of similar import that should have been merged.

We caution that this conclusion is based upon the specific facts elicited at Fairman's trial. However, because *Johnson* sets forth a factually based test, our conclusion here does not preclude the possibility that the facts established at a second trial might be different, which could compel a different result.

Fairman at ¶ 67-68.

{¶ 39} Notably, the defendant in *Fairman* shot the victim in the chest immediately upon being handed a gun by an onlooker. *Id.* at ¶ 5. Under those circumstances, we reasoned that the two offenses involved the same conduct and were not committed separately or with a separate animus. Unlike *Fairman*, the record here supports a reasonable inference that Jones possessed a handgun while he was traveling and then waiting in the Hyundai Tucson, well before he used the handgun to kill Pate. Jones' possession of the weapon for a meaningful time before the shooting at least arguably completed the offense of having a weapon while under disability. "Offenses are committed separately within the meaning of R.C. 2941.25(B) if 'one offense was complete before the other offense occurred, . . . notwithstanding their proximity in time and that one [offense] was committed in order to commit the other.'" *State v. Woodard*, 2022-Ohio-3081, ¶ 38 (2d Dist.), quoting *State v. Turner*, 2011-Ohio-6714, ¶ 24 (2d Dist.). We decline to extend *Fairman* to Jones' case, which more clearly involved separate conduct, particularly considering our recognition in *Fairman* that it was "based upon the specific facts elicited at Fairman's trial." *Fairman* at ¶ 68.

{¶ 40} Last, Jones also arguably committed the two offenses with a separate animus. In *State v. Grissom*, 2014-Ohio-857 (2d Dist.), we distinguished *Fairman*, noting that it involved a defendant's immediate intent to possess a gun for the sole purpose of shooting the victim. Although we found no separate animus in *Fairman*, we recognized in *Grissom* that that a separate animus may exist under different circumstances. In *Grissom*, for example, we noted that the defendant had acquired a gun "at some point in time before the shooting incident." *Id.* at ¶ 44. We saw no evidence that he had "acquired the gun with an immediate intent to fire at [the victim] and that he had no other reason for acquiring the gun."

Id. Absent any evidence to the contrary, we found a separate animus for the two offenses, concluding that the defendant’s “choice to possess a gun while under disability was separate and distinct from his choice to fire the gun at [the victim].” *Id.*; see also *State v. Elder*, 2011-Ohio-4438, ¶ 7-8 (5th Dist.) (reasoning that the animus for having a weapon while under disability is to possess a weapon, whereas the animus for felonious assault is a conscious choice to use the weapon against someone). The record before us reasonably supports the same conclusion. We see no obvious error in the trial court’s failure to merge murder and having a weapon while under disability as allied offenses of similar import.

{¶ 41} Jones next contends the trial court was required to merge his four firearm specifications into one. Although he raised this argument below, he acknowledges that it is foreclosed by existing Ohio Supreme Court precedent. Jones explains that he is raising the issue to preserve it for further appeal.

{¶ 42} Upon review, we conclude that the trial court did not err in imposing two consecutive sentences and two concurrent sentences on the firearm specifications. The four specifications accompanied two murder charges and two felonious assault charges related to Pate’s death. Although the trial court merged the four substantive offenses into one count of murder for purposes of sentencing, it was permitted to impose separate sentences on the underlying specifications.

{¶ 43} In *State v. Bollar*, 2022-Ohio-4370, the Ohio Supreme Court held that R.C. 2929.14(B)(1)(g) permits imposing sentences on multiple firearm specifications for certain felonies even when the underlying offenses merge as allied offenses. In fact, the majority recognized that the “statute requires that the offender receive prison terms for each of the two most serious firearm specifications when the offender pleads guilty to multiple felony offenses (and at least one of those is a felony listed in the statute) and also pleads

guilty to multiple accompanying specifications.” *Id.* at ¶ 19. “The statute makes no exception to the application of its provisions when one of the underlying felony offenses has been merged. Instead, it simply applies whenever the offender has pleaded guilty to (or been found guilty of) multiple felony offenses and multiple specifications.” *Id.*

{¶ 44} Consistent with R.C. 2929.14(B)(1)(g) and another statute, R.C. 2929.14(C)(1), the trial court properly imposed consecutive three-year prison terms on two of the four firearm specifications. *State v. Beatty*, 2024-Ohio-5684, ¶ 14. As for the other two specifications, it had discretion to impose concurrent three-year prison terms on them. *Id.* at ¶ 27; see also *State v. Bryant*, 2026-Ohio-1674, ¶ 40 (2d Dist.) (applying *Beatty*). The fourth assignment of error is overruled.

{¶ 45} The fifth assignment of error states:

**APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS
GUARANTEED BY ARTICLE I, SECTION 10 OF THE OHIO
CONSTITUTION AND THE SIXTH AND FOURTEENTH AMENDMENTS.**

{¶ 46} Jones alleges ineffective assistance of counsel based on his trial attorney’s failure to move for separate trials on the aggravated robbery charge and the charges related to Pate’s murder.

{¶ 47} We review alleged instances of ineffective assistance of counsel under the two-part analysis found in *Strickland v. Washington*, 466 U.S. 668 (1984), which the Ohio Supreme Court adopted in *State v. Bradley*, 42 Ohio St.3d 136 (1989). To prevail on an ineffective-assistance claim, a defendant must show that trial counsel rendered deficient performance and that the deficient performance prejudiced the defense. *Strickland* at 687; *Bradley* at paragraph two of the syllabus.

{¶ 48} The issue here is whether defense counsel provided ineffective assistance by failing to seek separate trials on the aggravated robbery and murder-related charges against Jones. Under Crim.R. 8(A), multiple offenses may be joined for trial if they are part of a common plan or a course of criminal conduct. If severance is sought under Crim.R. 14, the question is whether joinder results in prejudice. *State v. Lott*, 51 Ohio St.3d 160, 163 (1990). “A defendant claiming error in the trial court’s refusal to allow separate trials of multiple charges under Crim.R. 14 has the burden of affirmatively showing that his rights were prejudiced; he must furnish the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant’s right to a fair trial, and he must demonstrate that the court abused its discretion in refusing to separate the charges for trial.” *State v. Torres*, 66 Ohio St.2d 340 (1981), syllabus.

{¶ 49} “When a defendant claims that he was prejudiced by the joinder of multiple offenses, a court must determine (1) whether evidence of the other crimes would be admissible even if the counts were severed, and (2) if not, whether the evidence of each crime is simple and distinct.” *State v. Schaim*, 65 Ohio St.3d 51, 59 (1992), citing *State v. Hamblin*, 37 Ohio St.3d 153, 158-159 (1988). “Under the second method, the ‘joinder’ test, the state is not required to meet the stricter ‘other acts’ admissibility test, but is merely required to show that evidence of each crime joined at trial is simple and direct.” *Lott* at 163, citing *State v. Roberts*, 62 Ohio St.2d 170, 175 (1980). “Thus, when simple and direct evidence exists, an accused is not prejudiced by joinder regardless of the nonadmissibility of evidence of these crimes as ‘other acts’ under Evid.R. 404(B).” *Id.* Evidence is “simple and direct” where (1) proof of each offense is “separate and distinct” or could be “readily separated”; (2) the jury is unlikely to be confused; and (3) “the evidence of each crime is uncomplicated.” *State v. Coley*, 93 Ohio St.3d 253, 260 (2001); *State v. LaMar*, 2002-Ohio-

2128, ¶ 52; and *State v. Clinton*, 2017-Ohio-9423, ¶ 52. Under the joinder test, “simple and direct” evidence may include circumstantial evidence. *State v. Eichenlaub*, 2026-Ohio-2, ¶ 21 (2d Dist.). In this context, the reference to “direct” evidence is more of a term of art. See *State v. Carter*, 2022-Ohio-3806, ¶ 16 (9th Dist.) (recognizing that “[c]ircumstantial evidence can be ‘simple and direct’ for purposes of joinder”).

{¶ 50} Here the State charged Jones with robbing J.B. at gunpoint outside of the Palms Lounge in Harrison Township. J.B. testified that a masked assailant robbed him while he was walking to his car. Security camera footage captured a dark Hyundai Tucson in the Palms Lounge parking lot near the time of the incident, which allegedly occurred less than an hour before Pate was shot in the parking lot of Napoleon’s bar. The jury apparently either disbelieved J.B.’s testimony about being robbed or found that the robber’s identity had not been proven.

{¶ 51} The evidence of Jones’ guilt in connection with Pate’s death was more substantial. It included the discovery of Jones’ prints on Pate’s vehicle and the Hyundai, his DNA on a green sweatshirt left in the Hyundai, and matching shell casings in Pate’s vehicle and outside of Jones’ sister’s apartment. The evidence also included cell-site location data showing that a cellphone Jones used had been near the scene of Pate’s murder and that the cellphone then moved to where police found the abandoned Hyundai.

{¶ 52} Even if we assume, purely arguendo, that evidence related to the alleged aggravated robbery would have been inadmissible in Jones’ trial on the murder-related charges, we see no ineffective assistance flowing from defense counsel’s failure to seek severance. The evidence supporting the different charges was simple and direct. The strongest evidence supporting the aggravated robbery charge was J.B.’s testimony.

The evidence supporting the murder-related charges included cellphone tracking data, fingerprints, DNA evidence, and matching shell casings.

{¶ 53} In our view, the jury could have easily separated the evidence supporting the different charges without confusion. The evidence was relatively simple and uncomplicated. Indeed, the jury’s ability to separate the evidence may be inferred from its not-guilty verdict on the aggravated robbery charge and its guilty verdicts on the murder-related charges. For the foregoing reasons, the record does not demonstrate ineffective assistance of counsel. The fifth assignment of error is overruled.

III. Conclusion

{¶ 54} The judgment of the Montgomery County Common Pleas Court is affirmed.

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EPLEY, J., and HUFFMAN, J., concur.