[Cite as *State v. Dearmond*, 2026-Ohio-4599.]

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

STATE OF OHIO	:	
	:	C.A. No. 2025-CA-79
Appellee	:	
	:	Trial Court Case No. 24-CR-023
v.	:	
	:	(Criminal Appeal from Common Pleas
TYREN L. DEARMOND SR.	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on November 20, 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,



ROBERT G. HANSEMAN, JUDGE

LEWIS, P.J., concurs.

HUFFMAN, J., concurs in judgment only.

OPINION
CLARK C.A. No. 2025-CA-79

THOMAS W. KIDD, JR., Attorney for Appellant
JOHN M. LINTZ, Attorney for Appellee

HANSEMAN, J.

{¶ 1} Tyren L. Dearmond, Sr. appeals from his conviction by a jury of felony murder predicated on felonious assault. Dearmond claims that the trial court erred when it overruled his motion to suppress and that his conviction was based on insufficient evidence and was against the manifest weight of the evidence. Dearmond also contends that the trial court erred in failing to admit an exculpatory statement he made to law enforcement and erred in refusing to suppress statements he made after invoking his right to counsel. For the following reasons, we affirm the trial court's judgment of conviction.

I. Facts and Course of Proceedings

{¶ 2} This case arose from the shooting and death of Duane Ellington. In the afternoon hours of December 21, 2023, Dearmond was at a residence on West Euclid Avenue in Springfield, Ohio, with a friend named Peterson. Dearmond was wearing orange pants and shoes and an orange and blue jacket. Another friend named Upshaw arrived to return Dearmond's cellphone. While outside the residence, Upshaw gave Dearmond a bear hug, and Dearmond stepped back and started to punch at Upshaw. Peterson attempted to break the two apart. At the same time, Ellington was driving down Euclid Avenue with his wife. Ellington knew the men and stopped the car to help Peterson break up the fight.

{¶ 3} Once Dearmond and Upshaw were separated, Peterson and Ellington walked across the street. While standing on the sidewalk near Upshaw's white jeep, Ellington was struck in the head by a bullet. Right before Ellington was shot, his wife was seated in their

parked vehicle and saw Dearmond waving a gun around. She also heard a woman scream "Put it away! You know what happens when you do that!" Upon hearing a single gunshot, Ellington's wife ducked down in her car seat; when she sat back up, she saw Ellington lying on the ground.

{¶ 4} After Ellington was shot, Peterson called 911 and reported to the operator that Dearmond had shot Ellington, Dearmond stated, "I didn't do this," got into Upshaw's jeep, and drove away.

{¶ 5} Ellington died three days later. A coroner performed an autopsy and determined that his cause of death was a single gunshot wound to the head. The coroner concluded that the bullet had entered Ellington's front left forehead and traveled backwards into his skull. The coroner ruled the manner of death a homicide.

{¶ 6} On January 17, 2024, Dearmond was indicted for purposeful murder, felonious assault, felony murder (based on the felonious assault), discharging a firearm on or near a prohibited premises, and having weapons while under disability.[1] Four of the indicted counts also charged three-year firearm specifications.

{¶ 7} Dearmond was arrested and interviewed at the Springfield Police Department on March 14, 2024. Prior to his interview, Detective Sullivan read Dearmond his Miranda rights. Dearmond told Det. Sullivan that he did not want to talk about the case but that he did have a statement to make. Thereafter, Dearmond signed the waiver of rights portion of the Miranda rights form. Det. Sullivan then asked Dearmond if he wanted to talk about the case at all, to which Dearmond stated "no" and that he wanted the detective to know that he and his friends and family all had had a good relationship with Ellington. Thereafter,

[1] Before the commencement of Dearmond's trial, the State dismissed the having weapons while under disability charge.

Dearmond spoke with Det. Sullivan and his partner, Det. Jordan. Throughout his interview, Dearmond refused to answer some questions while providing information to the detectives regarding other subjects. Over the course of approximately an hour and a half conversation with the detectives, Dearmond stated he would speak to the detectives later "once [he] got a lawyer."

{¶ 8} When asked if he wanted to tell his side of the story, Dearmond stated that "I can't," but then offered "hopefully one day once I get a lawyer, then we can sit down and talk." Later, Det. Jordan asked if Dearmond felt he needed to have counsel before "getting stuff off [his] chest"; Dearmond responded, "yes, sir." Jordan asked if Dearmond would want to share his side once he had counsel, and Dearmond replied "of course." Dearmond continued offering the detectives information and stated that, once he got an attorney, he would talk to that person and then they would all then sit down to talk, and he would tell his side of what happened.

{¶ 9} After Dearmond continued to offer some information, Det. Jordan asked Dearmond if he felt he wanted to discuss it more, but again Dearmond replied by stating "I can't," and "once I get an attorney," and then I will talk "all the way, word for word." Dearmond continued to discuss information with the detectives on some subjects, while refusing to provide information regarding the gun and certain things he did the day Ellington was shot. He stated approximately 14 different times that he would speak to detectives later "once he [got] a lawyer." For example, when Det. Jordan asked if he had been standing on the porch when the gun went off, Dearmond replied, "we can talk about all that later once I get a lawyer." Later, he said, "once I get a lawyer, I'll have a chance to answer your questions" and "I want to finish this conversation, but I want to do it the right way once I get a lawyer."

{¶ 10} During his interview, Dearmond told the detectives that they needed to check

the gun, investigate where it was located, and talk to the people who were outside when Ellington was shot to learn that he had run over to Ellington to help him. Dearmond also stated that what happened was not murder and repeatedly stated that he knew Ellington and that Ellington was a good guy. Dearmond also told detectives numerous times that there was “no way it happened the way it happened” and that the police report he read was not accurate. Dearmond also stated that he “would never have hurt those three men."

{¶ 11} Dearmond filed a motion to suppress on July 11, 2024. In his motion, he sought to suppress his statements to law enforcement, arguing that he had invoked his right to counsel. The trial court overruled Dearmond’s motion, finding that Dearmond’s statements were not sufficiently clear and unequivocal to invoke his right to counsel.

{¶ 12} A jury trial was held on September 30 and 31, 2025. The jury heard evidence from eight witnesses presented by the State. Ellington’s wife and Peterson both testified as eyewitnesses. The coroner testified regarding his findings and conclusions related to Ellington’s death. A paramedic testified about assisting Ellington at the scene and transporting him to the hospital. Detective Sullivan and two officers from the Springfield Police Department testified regarding the photographs and evidence collected on Euclid Avenue, including a black, loaded .22 semi-automatic pistol found lying on the ground. A firearms expert testified that the .22 semi-automatic pistol was operable and explained its safety features. Dearmond did not testify or present any witnesses.

{¶ 13} On October 2, 2025, the jury returned its verdicts. Dearmond was found not guilty of purposeful murder but guilty of felonious assault, felony murder, and discharging a firearm on or near a prohibited premises. The jury also found that, while committing those offenses, Dearmond had a firearm on or about his person or under his control and either displayed, brandished, indicated possession, or used it to facilitate the offenses.

{¶ 14} The trial court sentenced Dearmond on October 14, 2025. Prior to sentencing, the court merged the felonious assault and felony murder offenses, and the State elected to proceed on felony murder. The court imposed a 15-year to life sentence on the felony murder and a 10-year sentence on the discharging a firearm on or near a prohibited premises, to be served concurrently. The trial court also imposed two three-year prison terms on the firearm specifications, to run consecutively to one another and to Dearmond's 15-year to life sentence. Thus, Dearmond's aggregate sentence was 21-years to life.

{¶ 15} Dearmond appeals, raising three assignments of error:

1. The trial court erred by denying Dearmond's motion to suppress his custodial interview after he invoked his right to counsel.
2. The evidence was insufficient as a matter of law and/or against the manifest weight of the evidence to sustain Dearmond's convictions on counts two and three because the State failed to prove the predicate intent required by the transferred intent doctrine.
3. The trial court erred by excluding Dearmond's statement that he "would never have hurt those three men" as hearsay when Evid.R. 803(3) independently admitted it.

II. Dearmond's statements were not a clear and unequivocal invocation of his right to counsel.

{¶ 16} In his first assignment of error, Dearmond argues that the trial court erred when it overruled his motion to suppress. Dearmond claims that he invoked his right to counsel.

{¶ 17} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Weaver*, 2025-Ohio-2256, ¶ 7 (2d Dist.). "When considering 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. Burnside*, 2003-Ohio-5372, ¶ 8. "Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. . . . 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*.

{¶ 18} It is unquestionable that, "[u]nder the Fifth Amendment to the United States Constitution, no person shall be compelled to be a witness against himself or herself. To counteract the coercive pressure of custodial interrogations, police officers must warn a suspect, prior to questioning, that he or she has a right to remain silent and a right to the presence of an attorney." *State v. Hammett-Marette*, 2019-Ohio-394, ¶ 12 (2d Dist.), citing *Maryland v. Shatzer*, 559 U.S. 98, 103-104 (2010), citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

{¶ 19} It is well-settled that if a suspect effectively waives his right to counsel and right to remain silent after receiving Miranda warnings, law enforcement officers are free to question him. *North Carolina v. Butler*, 441 U.S. 369, 372-376 (1979). However, once a suspect invokes his right to remain silent, police must scrupulously honor the request and cease all questioning. *State v. Murphy*, 91 Ohio St.3d 516, 519 (2001), citing *Michigan v. Mosley*, 423 U.S. 96 (1975), citing *Miranda*. Police must also stop questioning a suspect when he clearly and unambiguously invokes his right to counsel. *Id*., citing *Davis v. United States*, 512 U.S. 452 (1994). The unambiguousness requirement applies equally to the invocation of the right to counsel and the right to remain silent. *Id.* at 779.

{¶ 20} The question of whether a suspect unambiguously and unequivocally requested counsel is an "objective inquiry." *State v. Morris*, 2026-Ohio-1519, ¶ 49, citing *Davis* at 459. "[T]he test is not whether an officer could possibly consider [the suspect's] statement as evincing a desire for a lawyer. [Instead, it is] whether a reasonable officer, under the totality of the circumstances, would have understood [the suspect's] statement to be an unambiguous and unequivocal request for a lawyer in that moment." *Id*. at ¶ 60, citing *Davis* at 459.

{¶ 21} "'If a suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.'" *State v. Hammett-Marette*, 2019-Ohio-394, ¶ 17 (2d Dist.), quoting *Davis* at 461-62 and *State v. Brown*, 2003-Ohio-5059, ¶ 18. "The officers also have no obligation to ask clarifying questions to ascertain if the suspect is attempting to invoke his right to counsel." *Id*., citing *Davis* at 461-462. Additionally, "[i]f the statement is ambiguous or equivocal in that a reasonable police officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, the cessation of questioning is not required." *State v. Henness*, 79 Ohio St. 3d 53, 63 (1997).

{¶ 22} The statement "maybe I should talk to a lawyer" has been held to be insufficient to invoke the right to counsel and require police to cease questioning. *Davis at* 462. The question "don't I supposed to have a lawyer present?" and the statement " I think I need a lawyer" have also been held to be unclear and too ambiguous to sufficiently invoke the right to counsel. *Brown* at ¶ 19; *Henness* at 63. We have also previously held the statement "I respect what you're doing and everything. I'm not trying to get into any kind of trouble…and if you're trying, you know, to get me in trouble, I'm gonna talk to a lawyer. . ." to not be a

clear and unequivocal invocation of the right to counsel. *State v. Hatten*, 2010-Ohio-499, ¶ 58 (2d Dist.).

{¶ 23} Recently, the Supreme Court of Ohio addressed a situation in which a defendant said "like I can't talk to a lawyer?" after being told by an officer "anybody could"; defendant then replied, "yeah cause that's—we goin' to do that because I don't know what you're talking about." The Supreme Court held that the defendant had not clearly and unequivocally invoked his right to counsel so as to require questioning of the suspect to stop. *State v. Morris*, Slip Opinion No. 2026-Ohio-1519, ¶ 54-55. The Supreme Court emphasized that a statement which implies a future desire for a lawyer, rather than a present assertion of a desire to speak with a lawyer, does not constitute an unambiguous and unequivocal request for counsel to require all questioning of a suspect to stop. *Id*. at ¶ 57, 59. The *Morris* Court explained, "[w]hen someone says that he is *going to* do something, that generally means that he will do it in the future. So, even if it were absolutely clear that Morris used "that" to refer to talking to a lawyer, he implied that he was going to do it at some point in the future rather than presently. Thus, he may have meant that he was going to talk to a lawyer in the future because he was not going to let them pin a shooting on him that he didn't do." (Emphasis in original.) *Id*. at ¶ 57.

{¶ 24} While Dearmond claims his various statements referring to counsel invoked his right to counsel, we have reviewed Dearmond's interview in its entirety and do not agree. Dearmond's statements to the detectives were similar to those in *Morris* and implied a future desire to have counsel. Dearmond repeated approximately 14 times that he would speak to detectives at a later time "once [he] had a lawyer." Dearmond was clear with the detectives early on that he would speak freely with them once he retained counsel and spoke with the attorney. Dearmond specifically referred to the future in his statements to the detectives by

stating he couldn't presently talk about "that," but that "hopefully one day once I get a lawyer, then we can sit down to talk." Dearmond also specified during the interview that once he got an attorney, he would "talk to them, then we will sit down and I'll tell my side."

{¶ 25} Given Dearmond's statements, which referred to having a lawyer *in the future*, the trial court did not err in finding that Dearmond's statements were not a clear and unequivocal invocation of his right to counsel. Therefore, the detectives did not violate Dearmond's constitutional right to counsel when they continued to question him regarding the events of December 21, 2023. Dearmond's first assignment of error is overruled.

III. Dearmond's conviction for felony murder was based on sufficient evidence and was not against the manifest weight.

{¶ 26} In his second assignment of error, Dearmond claims that there was insufficient evidence supporting his conviction for felony murder predicated on felonious assault.

{¶ 27} "When a defendant challenges the sufficiency of the evidence, [he] is arguing that the State presented inadequate evidence on an element of the offense to sustain the verdict as a matter of law." *State v. Matthews*, 2018-Ohio-2424, ¶ 7 (2d Dist.), citing *State v. Hawn*, 138 Ohio App.3d 449, 471 (2d Dist. 2000). "'During a sufficiency review, the reviewing court considers the evidence "in a light most favorable to the prosecution" "to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. McClain*, Slip Opinion No. 2026-Ohio-3934, ¶ 20, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 1997-Ohio-355, ¶ 49, fn. 4. "Because the question whether evidence is sufficient to support a verdict is a question of law, an appellate court reviews a challenge to the sufficiency of the evidence de novo." *Id*., citing *State v. Dent*, 2020-Ohio-6670, ¶ 15. "The verdict will not be disturbed

unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact." *State v. Dennis*, 79 Ohio St.3d 421, 430 (1997), citing *Jenks* at 273.

{¶ 28} In contrast, "[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *State v. Wilson*, 2009-Ohio-525, ¶ 12 (2d Dist.), citing *State v. Hufnagle*, 1996 WL 501470 (2d Dist. Sept. 6, 1996). When evaluating whether a conviction is against the manifest weight of the evidence, the 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), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin* at 175.

{¶ 29} Dearmond challenges only the mens rea or the intent element of his conviction for felony murder (with felonious assault as the predicate offense). Specifically, Dearmond claims that there was no evidence presented at trial to show that he intended any harm to Ellington. Additionally, Dearmond argues that, under the State's theory of transferred intent, there was also no evidence to indicate that he intended physical harm to Upshaw, and therefore no intent transferred to Ellington, the unintended victim.

{¶ 30} The jury found Dearmond guilty of murder pursuant to R.C. 2903.02(B), also known as felony murder. In order to convict a defendant of felony murder, the State must prove the defendant caused the death of another "as a proximate result of committing or

attempting to commit an offense of violence that is a felony of the first or second degree that is not a violation of section 2903.03 or 2903.04 of the Revised Code." R.C. 2903.02(B).

{¶ 31} We have explained that, "[i]n 1998, the Ohio General Assembly added the felony-murder provision to Ohio's murder statute." *State v. Scott*, 2024-Ohio-5595, ¶ 12 (2d Dist.). "The felony murder provision does not prohibit specific conduct. Instead, that section prohibits the result of causing the death of another as a proximate result of committing an offense of violence that is a first- or second-degree felony." *Id*., quoting *State v. Cook*, 2010-Ohio-6222, ¶ 49 (2d Dist.). "In other words, commission of another felony offense is a necessary predicate to an R.C. 2903.02(B) offense, and the predicate felony must be a proximate cause of the death R.C. 2903.02(B) prohibits." *Id*., quoting *Cook* at ¶ 49. "The only mental state required for conviction under R.C. 2903.02(B) is the mental state required for the underlying felony offense." *Id*., quoting *State v. Flow*, 2022-Ohio-4416, ¶ 78 (6th Dist.), citing *State v. Miller*, 2002-Ohio-4931.

{¶ 32} In *Miller*, the Supreme Court of Ohio considered whether felony murder was supported by evidence that established that the defendant had shot the victim knowingly, when the underlying offense of violence charged was felonious assault. *Miller* at ¶ 20. The Court explained that, "[i]f [a] defendant has knowingly caused physical harm to his wife by firing the gun at her . . ., he is guilty of felonious assault. The fact that she died from her injuries makes him guilty of felony murder, regardless of his purpose." *Id*. at ¶ 33. "The felony-murder statute imposes what is in essence strict liability. Though intent to commit the predicate felony is required, intent to kill is not." *Scott* at ¶ 13, quoting *State v. Nolan*, 2014-Ohio-4800, ¶ 9.

{¶ 33} The jury found Dearmond guilty of felonious assault (the predicate offense to felony murder here) pursuant to R.C. 2903.11(A)(2). In most circumstances, felonious

assault is a felony of the second degree. R.C. 2903.11(D)(1)(a). In order to establish that a defendant committed felonious assault, the State must prove the defendant knowingly caused or attempted to cause physical harm to another by means of a deadly weapon. R.C. 2903.11(A)(2). The term "deadly weapon" means "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon." R.C. 2923.11(A); R.C. 2903.11(E)(1).

{¶ 34} "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). "A person has knowledge of circumstances when the person is aware that such circumstances probably exist." *Id*.

{¶ 35} "The law has long recognized that intent, lying as it does within the privacy of a person's own thoughts, is not susceptible of objective proof. The law recognizes that intent can be determined from the surrounding facts and circumstances, and persons are presumed to have intended the natural, reasonable and probable consequences of their voluntary acts." *State v. Garner*, 74 Ohio St.3d 49, 60 (1995). "'Intent can never be proved by the direct testimony of a third person and it need not be. It must be gathered from the surrounding facts and circumstances . . . .'" *Id*., quoting *State v. Lott*, 51 Ohio St.3d 160, 168 (1990), quoting *State v. Huffman*, 131 Ohio St. 27 (1936), paragraph four of the syllabus. "[I]ntent [or acting knowingly] may be inferred in a felony-murder when the offense [of felonious assault] and the manner of its commission would be likely to produce death." *Id*.

{¶ 36} There is sufficient evidence in the record to support the jury's conclusion that Dearmond acted knowingly and committed felony murder with the underlying offense of felonious assault. Ellington's wife testified that she saw Dearmond fighting with Upshaw when Ellington stopped their car to assist Peterson in breaking the two men apart.

Thereafter, she saw Dearmond, who she described as wearing all orange clothing, waiving a gun. Ellington's wife identified Dearmond at trial as the man she saw wearing what she described as an orange jump suit. She had heard the sound of one gun shot and, when she looked across the street, she saw Ellington on the ground. She also saw Dearmond get into a white jeep and drive away. The jury also heard testimony from Peterson that, immediately after the gun shot, he called 911 and told the operator that Dearmond had shot Ellington.

{¶ 37} While neither Ellington's wife nor Peterson (the only eyewitnesses at trial) testified that they had seen Dearmond point the gun at Ellington, the jury could have reasonably concluded that Dearmond pointed the gun at Ellington. "A reasonable jury can convict a defendant of felonious assault if the defendant knowingly pointed a gun that qualifies as a 'deadly weapon' at the victim and either fired or attempted to fire in the victim's direction." *State v. Peters*, 2023-Ohio-4362, ¶ 13, citing *State v. Brooks*, 44 Ohio St.3d 185, 192 (1989). Additionally, "[t]he shooting of a gun in a place where there is a risk of injury to one or more persons supports the inference that [a defendant] acted knowingly." *State v. Gregory*, 90 Ohio App.3d 124, 131 (12th Dist. 1993), citing *State v. Cartellone*, 3 Ohio App.3d 145, 148 (8th Dist. 1981) and *State v. Green*, 58 Ohio St.3d 239 (1991); *See also State v. Phillips*, 75 Ohio App. 3d 785 (2d Dist.) (defendant's intent to cause physical harm could be inferred from his having shot a gun randomly in the direction of other individuals); *State v. Hibbard*, 2003-Ohio-5104 (12th Dist.) (discharging a firearm in a swinging arc motion in the victim's direction as the victim was running supported felonious assault conviction).

{¶ 38} Evidence from the coroner established that the bullet's path was from an undeterminable distance away from Ellington and that the bullet struck him on his front left forehead and traveled straight back into his skull. Fragments from the bullet were removed from Ellington's brain. Additionally, Peterson testified that he had been standing next to

Ellington facing in the direction of Dearmond, who was across the street. From Peterson's testimony, the entry wound on Ellington's forehead, and the bullet fragments recovered during his autopsy, the jury could have reasonably concluded that Dearmond, who was standing across the street from Ellington and was described as having a gun, pointed it toward where Ellington was standing and fired it.

{¶ 39} The jury also heard evidence from an expert witness that the gun had been loaded and operable and that it would not have fired unless its trigger was squeezed. White testified that he had examined the gun and found it to have multiple safety features which were all in working order. One of the safety features was on the gun's trigger. Considering all of the safety features, White testified that the gun would not have fired unless the safety features had been moved to their respective off settings, and then the trigger was squeezed. In our view, these facts, if believed, supported the jury's determination that Dearmond had acted with knowing intent. Waiving a loaded, operable gun, with its safety features off and a finger on the trigger on a residential street was knowing conduct which was probable to cause serious physical harm or death to another person who was in the vicinity.

{¶ 40} Dearmond argues that under the transferred intent theory, there was insufficient evidence of his intent to cause harm to Upshaw, and therefore, no intent to transfer to Ellington. Under the well-established doctrine of transferred intent, "an offender who intentionally acts to harm someone but ends up accidentally harming another is criminally liable as if the offender had intended to harm the actual victim." *In re T.K.*, 2006-Ohio-3056, ¶ 15. However, the jury could have disregarded the doctrine of transferred intent under the facts and circumstances of this case, because, as we previously explained, there was sufficient evidence that Dearmond had acted knowingly. Additionally, the trial court's

jury instructions did not require consideration of transferred intent. We will not speculate as to whether the jury applied the doctrine of transferred intent in its deliberations.

{¶ 41} Dearmond's arguments that his conviction was against the manifest weight of the evidence was also based on the transferred intent doctrine. He contends that Peterson testified that Dearmond and Upshaw did not have "bad blood" and were long-time friends. Dearmond also focuses on the fact that no witness saw him point the gun or shoot at Upshaw or Ellington. However, an appellate court "must defer to the fact-finder's witness-credibility determinations" and may not substitute its view for that of the trier of fact. *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 38; *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21.

{¶ 42} Additionally, the credibility of the witnesses and the weight to be given to their testimony are matters for the trier of fact to resolve. *State v. Cantrell*, 2026-Ohio-1675, ¶ 38, citing *State v. Wilson*, 2009-Ohio-525, ¶ 15 (2d Dist.), citing *State v. DeHass*, 10 Ohio St.2d 230 (1967). This is because "the factfinder . . . has the opportunity to see and hear the witnesses [and] . . . [t]he decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *Id*., citing *State v. Lawson*, 1997 WL 476684, *4 (2d Dist. Aug. 22, 1997).

{¶ 43} The record does not support a conclusion that the jury lost its way in arriving at its verdict, and therefore its guilty verdict did not create a manifest miscarriage of justice. Dearmonds conviction for felony murder was not against the manifest weight of the evidence or based on insufficient evidence. Dearmond's second assignment of error is overruled.

IV. Dearmond's statement "I would never have hurt those three men" was properly excluded as hearsay.

{¶ 44} In his third assignment of error, Dearmond claims that the trial court erred by excluding his statement "I would never have hurt those three men" as hearsay during the

trial. Dearmond contends that the statement was admissible under Evid.R. 803(3) as a then existing state of mind. The State argues that Dearmond has waived all but plain error because he failed to object or raise this issue with the trial court during the trial. We agree with the State.

{¶ 45} Generally, "the admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173 (1987), paragraph two of the syllabus. Appellate courts apply an abuse of discretion standard of review when reviewing a trial court's decision on the admission or exclusion of evidence. *State v. Morris*, 2012-Ohio-2407, ¶ 22, 23. An abuse of discretion is defined as an unreasonable, arbitrary, or unconscionable decision. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 46} The record indicates that the trial court excluded the statement based on Dearmond's not being a party opponent under Evid.R. 801(D)(2)(a); Dearmond did to object or raise an argument that the then existing state of mind exception to the hearsay rule applied. Therefore, Dearmond waived all but plain error with respect to this evidentiary ruling. *Wortham v. Dayton*, 2023-Ohio-1767, ¶ 45 (2d Dist.) ("Evidentiary rulings that are not objected to at trial are waived for purposes of appeal unless the appellant demonstrates plain error."). Appellate courts have discretion to correct "[p]lain errors or defects affecting substantial rights" notwithstanding an appellant's failure to timely raise those errors in the trial court. Crim.R. 52(B). To prevail on a claim that the trial court committed plain error, an appellant must demonstrate that an error occurred, that such error constitutes an obvious defect in the trial proceedings, and that the error affected the outcome of the trial. *See, e.g.*, *State v. Gordon*, 2018-Ohio-259, ¶ 23.

{¶ 47} One exception to the hearsay rule is a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive,

design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed . . . .” Evid.R. 803(3). Under Evid.R. 803(3), “the testimony sought to be introduced must point towards the future rather than the past.” *State v. Apanovitch*, 33 Ohio St.3d 19, 21 (1987); *State v. Leonard*, 2004-Ohio-6235, ¶ 108, citing *Shepard v. United States*, 290 U.S. 96, 105-106 (1933) (hearsay statements that relate past events are not admissible under the state-of-mind exception) and Weissenberger, Ohio Evidence (2004) 463, Section 803.30 (“Where the statement does not pertain to a ‘then existing’ condition, it must be viewed as a narrative account of a past event formulated after time for reflection, and it is not admissible under Rule 803[3].”).

{¶ 48} Here, Dearmond’s statement “I would never have hurt those three men” did not point toward the future; it related to his state of mind on December 21, 2023, and therefore his state of mind in the past. Therefore, the statement was not admissible as a hearsay exception under Evid.R. 803(3).

{¶ 49} Regardless, the statement was contained in State’s Exhibit 60, an audio and video recording of a portion of Dearmond’s interview with detectives. The jury watched and listened to the video during Detective Sullivan’s direct examination. In the recording, it is audible that Dearmond stated, “I would never have hurt those three men.” While the trial court prohibited eliciting this statement from Detective Sullivan’s testimony during the trial, the jury received Dearmond’s statement in the form of State’s Exhibit 60. As a result, the record does not demonstrate plain error. Dearmond’s third assignment of error is overruled.

V. Conclusion

{¶ 50} Having overruled Dearmond’s three assignments of error, the judgment is affirmed.

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LEWIS, P.J., concurs.

HUFFMAN, J., concurs in judgment only.