

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. {48}L-25-00138

Appellee/Cross-appellant

Trial Court No. CR0202402089

v.

Sean Duhart

DECISION AND JUDGMENT

Appellant/Cross-appellee

Decided: August 28, 2026

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee/cross-appellant.

Russell S. Bensing, for appellant/cross-appellee.

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MAYLE, J.

{¶ 1} Following a jury trial, defendant-appellant, Sean Duhart, appeals the June 17, 2025 judgment of the Lucas County Court of Common Pleas, convicting him of aggravated murder, murder, felonious assault, and discharge of a firearm on or near a prohibited premises, all with attached specifications. The State of Ohio cross-appeals the June 17, 2025 judgment to the extent that it lists multiple terms of post-release control. For the following reasons, we reverse and remand this case for the limited purpose of entering a nunc pro tunc entry that includes only the term of post-release control applicable to Duhart. We affirm the trial court judgment in all other respects.

I. Background

{¶ 2} Sean Duhart was charged with the following offenses in connection with the February 11, 2024 shooting death of M.B.W.: (1) aggravated murder, a violation of R.C. 2903.01(A) and (G), an unclassified felony (Count 1); murder, a violation of R.C. 2903.02(A), an unclassified felony (Count 2); murder, a violation of R.C. 2903.02(B), an unclassified felony (Count 3); felonious assault, a violation of R.C. 2903.11(A)(2) and (D), a second-degree felony (Count 4); and discharge of a firearm on or near a prohibited premises, a violation of R.C. 2923.162(A)(3) and (C)(4), a first-degree felony (Count 5). All counts carried with them three-year gun specifications under R.C. 2941.145, and five-year specifications under R.C. 2941.146 for discharging a firearm from a motor vehicle. The matter was tried to a jury beginning April 24, 2025, at which the following evidence was presented.

A. J.S. steals Duhart's mother's red Hyundai Sonata from Vermaas Carryout.

{¶ 3} On Sunday, February 11, 2024, at approximately 1:07 p.m., Duhart drove his mother's red Hyundai Sonata to Vermaas Carryout and left it running at the curb. While Duhart was in the carryout, J.S. came in, which, the clerk testified, appeared to make Duhart very nervous. J.S. went back outside to his car, and the clerk told Duhart to hide in the back storage room. J.S. returned to the store—his face now covered with a mask, carrying what appeared to be a gun—and looked for Duhart. He went into the back storage room, but did not see Duhart because Duhart had snuck into the basement. J.S. gave up looking for Duhart, then left the store in Duhart's mother's car. The clerk called her boss, who advised her to lock the door, then Duhart used the phone to call his mother

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to tell her that the car had been stolen. His mother picked him up from the carryout at approximately 1:28 p.m. Vermaas Carryout had multiple cameras—both inside and outside—that captured these events. The recordings were played for the jury.

{¶ 4} At approximately 1:24 p.m., Duhart’s mother, A.C., called 9-1-1 and reported that her son was at the Vermaas Carryout, he was being threatened by a group of three to five black males with guns, and his car had been taken. At 1:52 p.m., she called again, reported the car stolen, and told the operator that the tracker on the red Hyundai Sonata showed that the vehicle had been near Willys Parkway, Hazelhurst Avenue, and 1646 Berdan Avenue.

{¶ 5} Toledo Police Officer Christopher Massingill heard a broadcast report of the stolen vehicle and was looking for the vehicle near the roundabouts near Haverhill Drive and Phillips Avenue when he was directed to a shooting at Sylvania Avenue and Hoiles Avenue that had been reported at 2:03 p.m. He went to that intersection and observed the red Hyundai Sonata crashed into a dumpster in a church parking lot. It was riddled with bullet holes and its only occupant—the driver—was deceased.

B. J.S. had loaned the stolen vehicle to M.B.W.

{¶ 6} M.W. and M.B.W. had been dating for about a year-and-a-half and were living together at her mother’s house. On February 11, 2024, they awoke sometime between 12:00 and 12:30 p.m. M.B.W.’s phone was dead, so he placed it on the charger. Soon after, his friend, J.S., called. M.W. did not like J.S.—he had a “very bad energy” and seemed “schemey” (sic) and “sneaky.” J.S. told M.B.W. that he would take him to

pay his cellphone bill at Metro PCS on Sylvania Avenue. M.B.W. got ready and J.S. picked him up.

{¶ 7} About 35 to 40 minutes after M.B.W. left, M.W. began receiving Ring notifications that there had been a shooting at Sylvania Avenue and Hoiles Avenue. She checked M.B.W.'s location on Life360 and saw that M.B.W. was at that intersection. M.B.W.'s phone had been dead, so M.W. called J.S., believing they were together. J.S. explained that M.B.W. had dropped him off. He told M.W. that the vehicle that M.B.W. was driving "got lit up"—i.e., had been shot up—and he told her to go to the nearest hospital. M.W. went to the Toledo Hospital and learned that M.B.W. had died.

{¶ 8} The Lucas County Coroner performed an autopsy and determined that M.B.W. had died from multiple gunshot wounds. He had suffered 18 gunshot-related wounds, which had mainly penetrated his body from left to right. His death was ruled a homicide.

{¶ 9} Lead detective, Danielle Mooney, interviewed J.S. on February 14, 2024. He denied knowing the victim, and the interview was unproductive. She also spoke with the victim's sister, who provided names of possible suspects who were later excluded. A witness to the shooting reported that the shooter was the passenger in the gray sedan, but Detective Mooney also spoke to a witness on February 19, 2024, who came into the station and said that he saw only a driver in the vehicle—no passenger. The witness qualified this by saying that he had quickly looked away for fear that he may be shot if the killer thought he had been seen.

C. Video footage shows a silver Chevy Malibu following the Hyundai.

{¶ 10} Soon after the shooting, detectives started collecting surveillance footage from cameras in the area. A business located at the intersection where the shooting occurred had clear audio and visual footage of the shooting. The recording showed that the red Hyundai approached Sylvania Avenue from Hoiles and was overtaken on the left by a silver Chevy Malibu. Someone inside the Malibu fired numerous gunshots at the Hyundai as it entered the intersection, then the Malibu turned left onto Sylvania Avenue, while the Hyundai rolled forward through the intersection.

{¶ 11} With this information, detectives gathered additional security footage from homes on Hoiles. In one of the videos, the Hyundai passed by the home three times. The third time it passed—about 40 minutes after the first time it passed—it was being followed by a silver Malibu, its front passenger window down and a person visible in the passenger seat. Less than 15 seconds after the vehicles passed the home, at approximately 2:02 p.m.,¹ gunshots can be heard. A second camera closer to the intersection recorded the silver Malibu as it was gaining on the red Hyundai.

{¶ 12} After determining that the perpetrator fired the shots from a silver Malibu, detectives pulled data from Flock cameras—a system of pole-mounted solar-powered cameras that read and store license plates of passing vehicles. The cameras showed that the Chevy Malibu was at the following locations at the following times:

- Westbound Fassett Street at Wofford Drive at 10:21:14 a.m.

¹ The timestamp on the video shows that the shots were fired at 1:40:48, but there was testimony that the timestamp was 21 minutes slow.

- Northbound Oak Street at Earl Street at 1:42:10 p.m.
- Westbound on the High Level Bridge at Clark Street at 1:43:27 p.m.
- Northwest Berdan Avenue at Jeep Parkway at 1:52:59 p.m.
- Eastbound Miami Street at Oregon Road at 2:11:00 p.m.
- Southbound North Dixie Highway at southbound I-475 in Perrysburg, at 2:30:30 p.m.
- Northbound Burger Street at Seaman Road at 7:55:27 p.m.

{¶ 13} The vehicle's occupants could not be seen in still photos taken by the Flock cameras, but with the vehicle's license plate number, detectives determined that the vehicle was rented by Enterprise to a person named A.B. Detectives went to A.B.'s home, where she was on the phone with Mercedes Rodriguez² discussing the vehicle. They learned that although A.B. had rented the vehicle, Mercedes had been using it. On speakerphone, Mercedes claimed that the Malibu had been stolen from her boyfriend's house. Mercedes agreed to meet with detectives downtown at the Hy Miler gas station where she worked. After they hung up with Mercedes, A.B. told detectives that Mercedes had told her that the car was stolen from a gas station.

{¶ 14} Detectives tried to find the downtown Hy Miler gas station, but discovered that there was no Hy Miler gas station downtown. They went back to the station, and found that A.B. had left a message for Detective Mooney, informing her that Enterprise could track the Malibu via OnStar. After connecting with Enterprise, Detective Mooney

² Mercedes told detectives her name was Mercedes Gonzalez.

learned that they could also place the vehicle in “limp mode,” limiting the speed at which the vehicle could travel.

{¶ 15} Sometime between 7:30 and 7:50 p.m., OnStar located the Chevy Malibu at Seaman and Burger by Hecklinger’s Pond. While detectives were on their way to the pond, a couple called 9-1-1 at 7:57 p.m. to report that two African-American males, approximately 17 to 25 years old, were attempting to launch a car into the pond. The man, L.L., yelled and the young men ran away. When police arrived at the scene, they found the Malibu facing the water. There was a cinder block on the driver’s floorboard, and the rear windshield had been smashed.

{¶ 16} The vehicle was towed and secured as evidence. Several areas were swabbed for DNA, including the steering wheel, gear shift, interior armrests and grab handles of all four doors, and the exterior trunk and bumper. Various other items were sent for DNA analysis as well. Detectives would later learn that DNA collected from the gear shift was consistent with Catarino Rodriguez. The DNA of E.R. was found in the back seat of the car. All the other samples were either insufficient for comparison or contained too much DNA to identify. Duhart’s DNA was not detected in any of the specimens that were tested.

D. Cell tower evidence leads detectives to Rodriguez.

{¶ 17} Detectives performed a “tower dump” to identify cellular devices present at the locations tied to the Chevy Malibu via the Flock cameras and the crime scene video. There was one cellphone number that connected with all the same towers as the Chevy Malibu. That cellphone number belonged to Catarino Rodriguez.

{¶ 18} Duhart’s cellphone did not follow the same path, but his cellphone had been left in the stolen Hyundai. Records show that the phone remained stationary in the vicinity of Jackman Road and Hillcrest Avenue from 2:00 p.m. on February 11, 2024, until it went off-network on February 13, 2024. It had presumably been discarded soon after the Hyundai was stolen.

E. The murder weapon is found.

{¶ 19} On May 20, 2024, police were alerted to shots fired in the 500-block of Leach Avenue, and 9-1-1 calls reported someone shooting a firearm at a dog. Detectives reviewed cameras from Lucas County Metropolitan Housing Authority’s Weiler Homes and saw a male fleeing while holding his waistband. As officers collected shell casings at the scene, they saw the man enter 532 Earl Street, then leave. They stopped him and discovered that he had warrants and was carrying marijuana. Detectives spoke with a resident of 532 Earl Street, Mathias Rodriguez, who admitted that the male came to buy marijuana and he had sold it to him.

{¶ 20} A search warrant was obtained and executed for firearms, ammunition, and marijuana at 532 Earl Street. Multiple individuals lived at the address, including Mathias and Marquise Rodriguez. During the search, detectives found a mini-Draco firearm in an upstairs bedroom closet inside a black guitar case. Mathias Rodriguez said that he purchased the firearm “from the streets.” The State presented testimony that Mathias and Marquise Rodriguez are members of the Jugs Gang.

{¶ 21} Twenty shell casings, all of the same caliber, had been collected from the scene of M.B.W.’s February 11, 2024 shooting. The gun that was confiscated from the

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Earl Street residence—a Romarm Draco pistol—was tested, and it was determined that three of the 20 shell casings from the February 11, 2024 shooting were fired from that particular gun. The remaining 17 casings had similar characteristics but were inconclusive as to whether they were fired from that exact pistol. Of those 17 casings, 11 were identified as having been chambered or extracted by the Draco pistol. Six casings lacked sufficient markings to identify or eliminate them as having been fired, chambered, or extracted by the Draco pistol. In total, 14 of the 20 casings were linked to the Draco pistol either by firing, chambering, or extraction.

**F. Detectives search Catarino’s phone, interview Duhart,
and obtain Duhart’s jailhouse phone calls.**

{¶ 22} On February 11, 2024, Detective Mooney spoke with Duhart and his mother, A.C., at 219 Bronson Street concerning the theft of the red Hyundai. Duhart was calm. He was vague about J.S. and the incident at the carryout, and Detective Mooney asked no questions about the homicide at that time.

{¶ 23} Detective Mooney interviewed Catarino Rodriguez on June 5, 2024, and got a warrant for his cellphone. She reviewed February 11, 2024 Facebook messages between Catarino and Duhart’s mom, A.C., and Catarino and Duhart’s sister, C.D., and discovered the following missed calls and messages:

- Catarino missed several calls from A.C. in rapid succession between 1:29 and 1:30 p.m. At 1:29:50 p.m., A.C. messaged “Cat pull” and at 1:30:23 p.m., A.C. texted “Call me ASAP.”
- C.D.’s messages began at 1:51:31 p.m. with “Wya gang,” to which Catarino replied “2 minutes.” At 1:56:20, C.D. texted “1642 Berdan.”

- At 1:57:12 p.m. C.D. warned “be careful the police looking for her car,” then at 2:00:46 p.m., Catarino said “keep sending the lo.”
- At 2:01:53 p.m. C.D. sent “3803 Hoiles Avenue,” followed by “it hasn’t moved yet” at 2:03:16 p.m. and “leave” at 2:07:01 p.m.
- At 2:08:11 p.m. Catarino wrote “it’s coo the police a get it back,” then 30 seconds later, “bouta go smoke in (sic) drink.” C.D. replied at 2:08:47 p.m., “yall be safe.”
- Additional missed calls and video calls occurred between Catarino and C.D. between 2:15 p.m. and 3:06 p.m.

Detective Mooney believed the messages reflected someone directing Catarino to the car’s location.

{¶ 24} On July 24, 2024, Detective Mooney interviewed Duhart, his mother, and his sister. Duhart’s sister, C.D., admitted knowing that someone was killed in her mother’s car, but denied knowing Catarino. His mother, A.C., admitted knowing Catarino, but claimed to have no knowledge of the Facebook messages. She appeared confused and upset.

{¶ 25} Detective Mooney’s interview with Duhart was admitted into evidence. In it, Duhart downplayed his relationship with Catarino and acted like he barely knew him. However, after being told that Detective Mooney had the messages between Catarino and Duhart’s mother and sister, Duhart claimed that he had sent the messages to Catarino from his mother and sister’s Facebook accounts. Initially, Detective Mooney believed him, and she charged Duhart for his role in the murder.

{¶ 26} In phone calls Duhart made from the jail the same day, he told family members that he admitted sending the messages from his mother and sister's phones because detectives had told him that they were going to charge them with complicity to murder.

G. Catarino Rodriguez and his cousin, Mercedes, confess and testify for the State.

{¶ 27} Catarino was charged with murder before Detective Mooney interviewed Duhart and his family on July 24, 2024. On December 2, 2024, with counsel present, Catarino told Detective Mooney his account of what happened on February 11, 2024. He said that he picked up Duhart from his house on Willys Parkway, they found Duhart's mother's red Hyundai, and Duhart shot the car up and killed M.B.W. Catarino identified the murder weapon as the Draco firearm recovered months earlier on Earl Street. He described the route he drove, and he said that he dropped Duhart off at the casino after the shooting.

{¶ 28} Detective Mooney initially did not believe Catarino, but she pursued corroboration. She found that Catarino's account was supported by contemporaneous Facebook call records and other data. Detective Mooney personally drove the route Catarino described, from 532 Earl down Oak Street, over the High Level Bridge to Summit Street, Newton Street to Collingwood Boulevard, I-75 to Jeep Parkway, Berdan to Willys, Alameda Drive to Hillcrest Avenue, then Hoiles. It took 18 to 21 minutes. This was consistent with the time window provided by the cellular data, which showed movement beginning at 1:42 p.m. and the Chevy Malibu fleeing the scene by 2:02 p.m.

{¶ 29} Mercedes Rodriguez was also arrested. When Detective Mooney first interviewed Mercedes after her arrest, Mercedes insisted that she knew that Duhart was the passenger and shooter, but did not say how she knew. In a later interview, Mercedes said that she saw Duhart with Catarino at Catarino’s mother’s house on Apex Lane in Perrysburg the night of the shooting and learned specific details the next day.

{¶ 30} Both Catarino and Mercedes testified at trial against Duhart.

1. Catarino

{¶ 31} Catarino was charged with aggravated murder, two counts of murder, felonious assault, discharge of a firearm near prohibited premises, tampering with evidence, and participating in a criminal gang. He and the State reached an agreement pursuant to which Catarino pled no contest to murder with a three-year firearm specification and participating in a criminal gang, with a sentence of 15 years to life plus three years on the specification. Under the plea agreement, he was required to give truthful testimony at Duhart’s trial. Although he pled no contest to participating in a criminal gang, Catarino denied at trial that he had been in a gang.

{¶ 32} Catarino described that Duhart had been his best friend since high school and was like a brother to him. Duhart had lived with Catarino and his mother for a few months in 2023.

{¶ 33} Catarino testified that before February 11, 2024, he and his cousin Mercedes swapped vehicles so he and Duhart could drive the rental car—the silver Malibu—to Florida instead of putting miles on his own car. When he returned, he continued to drive the rental vehicle. That weekend, he had taken the vehicle to

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Columbus. He returned from Columbus around 6:00 a.m. on February 11, 2024, and went to his cousin's apartment at the Weiler apartments on the east side. He slept until about 1:00 to 1:30 p.m.

{¶ 34} When Catarino awoke, he saw that he had multiple missed calls and messages on Facebook from accounts he believed were Sean's mother, A.C., and sister, C.D. He called A.C.'s Facebook account and Duhart answered, telling him to come over because he had been robbed. He drove the Malibu to Duhart's house off Willys Parkway, which took between eight to ten minutes. He brought his Draco firearm with him.

{¶ 35} Duhart entered the Malibu with his own AR-type rifle and they drove. On the drive, Duhart used Catarino's phone to communicate with his sister via Facebook Messenger because Duhart's own phone was in the stolen Hyundai. C.D. was tracking the stolen Hyundai through an app, relaying the information to Duhart, who then directed Catarino as to the route to take. They traveled Berdan to Alameda, to Haverhill, then back up Willys, where they saw the red Hyundai on Berdan and began following it. At Hoiles and Sylvania, Catarino tried to pull in front of the Hyundai to recover the car when Duhart—seated in the front passenger seat—began shooting. Duhart used Catarino's Draco firearm to shoot at the driver's side of the Hyundai. Catarino described that the gun was heavy and required two hands to shoot. He said that it sounded like Duhart fired many shots. Catarino froze in shock, then drove away.

{¶ 36} Catarino and Duhart drove to the Weiler apartments, where Catarino gave both guns to his cousin to hold.³ They then went to Catarino's mother's home on Apex Lane in Perrysburg. They stayed there about an hour, then—at Duhart's request—he dropped Duhart off at the casino.

{¶ 37} Sometime between 5:30 and 6:00 p.m., Duhart returned to the house on Apex and Catarino called his cousin, Mercedes, asking her to report the Malibu stolen so she would not be involved. Mercedes came over in Catarino's car. With Catarino in the front passenger seat and Duhart in the back, she reported the car stolen on speakerphone. After Mercedes left, Catarino and Duhart waited until dark and attempted to dump the Malibu in Hecky's Pond on the east side by pushing it and using a cinder block. They aborted their mission when a passing car stopped. They ran to a friend's house.

{¶ 38} Catarino testified that he knew J.S. from Start High School. He agreed that the incident arose because Duhart was angry with J.S. for stealing his mother's car. Catarino said that he had no issues with J.S. and would not have been involved but for Duhart's call. He maintained that when he first met with detectives, he initially withheld information due to fear. He explained that after reviewing discovery and reflecting, he decided to tell the truth.

2. Mercedes

{¶ 39} Mercedes Rodriguez was charged with participating in a criminal gang and obstructing justice. She and the State reached a plea agreement, pursuant to which she

³ On cross-examination, Catarino testified that he hid the gun in a first-floor closet.

pled guilty to attempted participating in a criminal gang, a third-degree felony, and the obstruction charge was dismissed. As part of that agreement, she agreed to provide truthful testimony at Duhart's trial, and the State agreed to remain silent at sentencing.

{¶ 40} Mercedes explained that after wrecking her car in January of 2024, A.B. rented the silver Malibu for her because Mercedes was not old enough to rent a car. Soon after, she swapped cars with her cousin, Catarino, so he and Duhart could drive to Florida without putting the miles on his own vehicle.

{¶ 41} On February 11, 2024, Mercedes awoke between 5:45 and 6:00 p.m. to repeated calls from Catarino instructing her to come to the "brick house" on Apex in Perrysburg. She arrived at approximately 6:45 p.m. Catarino entered her front passenger seat and Duhart the rear passenger seat, and Catarino told her to report the rental car stolen. They instructed her to say that she woke up at her boyfriend's house and the car was gone. Mercedes called A.B. and relayed that story. She called A.B. a second time, and learned that detectives were there. She spoke with Toledo Police Detective Danielle Mooney and, out of fear, provided a false name and other false information.

{¶ 42} The next day, Duhart and Catarino told Mercedes about Duhart's run-in with J.S. at the carryout. They told her that they tracked the car on OnStar and killed M.B.W. believing that J.S. was driving the vehicle. Hesitantly, they told her that Catarino was driving and Duhart was the shooter. They also told her that they bleached the rental car and tried to dump it in a pond, but someone had seen them.

{¶ 43} Mercedes acknowledged that there were discrepancies between her original statements and her trial testimony. In her first interview with Detective Mooney,

Mercedes did not tell the full story and falsely said that she had not seen Catarino until the day after the shooting. She also did not initially implicate Duhart. She explained that she was scared, lacked a lawyer, and had many people “in her ear” telling her what to say or not say. She denied that she was trying to protect Catarino because he was her cousin.

{¶ 44} Mercedes acknowledged being involved with the Jugs gang, and she said that J.S. “beefs” with the Jugs. She testified that Catarino is not in the Jugs, but she said that he is in a different gang.

{¶ 45} When Detective Mooney testified, she conceded that Catarino and Mercedes’s statements changed over time. She also acknowledged that no DNA, fingerprints, cellular data, or surveillance placed Duhart in the suspect vehicle or at the scene of the shooting. Only Catarino and Mercedes connected Duhart as the shooter. Detective Mooney also conceded that—contrary to Catarino’s testimony—she had seen evidence of Catarino’s gang affiliation. She explained that denying gang ties could protect him from harm in prison. She opined that Duhart was the one with the motive for the shooting.

H. The jury finds Duhart guilty of four counts.

{¶ 46} The jury found Duhart guilty of Counts 1, 2, 4, and 5, with the attached specifications, and not guilty of Count 3. The court found that Counts 1, 2, and 4 merged for purposes of sentencing, and the State elected to proceed to sentencing under Count 1. On Count 1, the court sentenced Duhart to a term of life in prison with the eligibility of parole after 30 years, plus three years on the gun specification and five years on the drive-by specification. It imposed prison terms of three years and five years on the

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specifications attached to Count 4. And it imposed a stated minimum prison term of eight years and a maximum prison term of 12 years on Count 5, plus three years and five years on the attached specifications. The trial court ordered Duhart to serve the sentences consecutively, for an aggregate prison term of life imprisonment with parole eligibility after a stated minimum prison term of 59 years with a maximum indefinite prison term of 63 years.

{¶ 47} Pertinent to the State’s cross-appeal, the judgment entry provides that Duhart was “notified of post-release control as follows: F-1: 2-5 years mandatory and F-2: 18 months-3 years mandatory.”

{¶ 48} Duhart appealed. He assigns the following errors for our review:

ASSIGNMENT OF ERROR NO. 1: The trial court erred in entering convictions of aggravated murder and discharging a firearm over prohibited premises as being against the manifest weight of the evidence, in derogation of defendant’s right to due process of law as protected by guaranteed by (sic) the Fifth and Fourteenth Amendments to the United States Constitution.

ASSIGNMENT OF ERROR NO. 2: The trial court committed plain error in giving a flight instruction.

ASSIGNMENT OF ERROR NO. 3: Defense counsel provided ineffective assistance, in derogation of defendant’s rights under the Sixth and Fourteenth Amendments to the United States Constitution.

ASSIGNMENT OF ERROR NO. 4: The trial court erred in failing to declare a mistrial, in derogation of defendant’s right to due process of law as protected by guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

{¶ 49} The State cross-appealed. It assigns the following error for our review:

A judgment entry listing multiple terms of postrelease control is clearly and convincingly contrary to law.

II. Law and Analysis

{¶ 50} In his first assignment of error, Duhart challenges his convictions as against the manifest weight of the evidence. In his second and third assignments of error, he argues that the trial court erred in including—and counsel was ineffective for failing to object to—“flight” language in the consciousness-of-guilt jury instruction. And in his fourth assignment of error, he argues that the trial court erred when it denied his motion for mistrial.

{¶ 51} The State in its sole assignment of error argues that the trial court’s sentencing entry is clearly and convincingly contrary to law to the extent that it lists multiple terms of post-release control.

A. Manifest Weight of the Evidence

{¶ 52} In his first assignment of error, Duhart argues that his conviction is against the manifest weight of the evidence. When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the jury clearly lost its way in resolving evidentiary conflicts so as to create 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). Reversal on manifest weight grounds is

reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶ 53} We often caution that while under a manifest-weight standard we consider the credibility of witnesses, we must nonetheless extend special deference to the jury’s credibility determinations given that it is the jury who has the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities such as hesitancy, equivocation, and candor. *State v. Fell*, 2012-Ohio-616, ¶ 14 (6th Dist.). We also routinely recognize that “jurors are free to believe some, all, or none of each witness’ testimony and they may separate the credible parts of the testimony from the incredible parts.” *State v. Hill*, 2024-Ohio-2744, ¶ 24 (7th Dist.), citing *State v. Barnhart*, 2010-Ohio-3282, ¶ 42 (7th Dist.), citing *State v. Mastel*, 26 Ohio St.2d 170, 176 (1971). “When there are two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, we will not choose which one is more credible.” *Id.*, citing *State v. Gore*, 131 Ohio App.3d 197, 201 (7th Dist. 1999).

{¶ 54} Much of Duhart’s manifest-weight argument focuses on our standard of review. He argues that an appellate court should not defer to a jury’s credibility determinations because to do so undermines the court’s role to act as a thirteenth juror. He maintains that “an appellate court will never disagree with the fact-finder’s resolution of the conflicting testimony if it invariably defers to the fact-finder’s resolution of the conflicting testimony.”

{¶ 55} The Ohio Supreme Court recently considered this precise issue. It clarified in *State v. Reillo*, 2026-Ohio-2701, ¶ 3, that “appellate courts reviewing a manifest-weight challenge must still give some deference to a fact-finder’s credibility determinations.” It acknowledged, as we often have, that this deference is owed because the fact-finder “is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” (Internal quotations omitted.) *Id.* at ¶ 28, quoting *In re Z.C.*, 2023-Ohio-4703, ¶ 14, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Importantly, the Court made clear in *Reillo* that while an appellate court may sit as a thirteenth juror, it may do so “only when evidence contradicts a fact-finder’s findings . . . or when a witness’s testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” *Id.* at ¶ 3.

{¶ 56} This recent guidance from the Ohio Supreme Court makes clear that we must review Duhart’s manifest-weight challenge in a manner consistent with our usual practice, which is to extend deference to the jury’s credibility determinations.

{¶ 57} Here, Duhart argues that but for the testimony of Catarino and Mercedes Rodriguez, the State’s case would not have survived a Crim.R. 29 motion because there was no other evidence linking him to the shooting. He emphasizes that his DNA was not found in the Malibu, there was no cellular data that linked him to the scene, none of the Flock photos show a second person in the vehicle, a witness reported seeing only one person in the Malibu, and it made no sense that Duhart would riddle his mother’s vehicle with bullets when he was seeking its return. Duhart maintains that Catarino had motive

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to shoot J.S. because J.S. was a member of a rival gang, and he had motive to fabricate evidence against Duhart to obtain a favorable plea agreement.

{¶ 58} The State responds that Duhart had motive to commit the crimes: revenge coupled with fear that J.S. was armed. It points out that Duhart conceded involvement when he admitted sending messages to Catarino. The State maintains that the gun's length and ejector position allowed the inference that the casings would eject outside of the car only if the shooter was in the passenger seat, and it emphasizes that a still photo taken from video surveillance shows that moments before the shooting, there was someone in the passenger seat. Finally, the State argues that Catarino and Mercedes both testified that Duhart was the shooter, and the jury found their testimony credible despite being aware of their plea agreements. It insists that cell data analysis, Flock photos, and location of the murder weapon confirmed Catarino's version of events.

{¶ 59} Certainly, there was no physical evidence implicating Duhart in the shooting. His DNA was not found in the Chevy Malibu; his cellphone was left in the stolen vehicle, so there was no cellular data to prove that he was in the Malibu; and the murder weapon was not found under Duhart's control. But physical evidence was not required to convict Duhart. If believed, Catarino's testimony—that Duhart called him, said his mother's car was stolen, asked Catarino to come get him, used Catarino's phone to communicate with A.C. and C.D concerning the car's location, then fired the Draco at M.B.W.—supported Duhart's conviction. So did Mercedes's testimony that Duhart admitted being the shooter. Catarino's version of events aligned with the evidence the police had, reflecting favorably on Catarino's credibility. Despite a witness's observation

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during the stress of the event, video footage from the Hoiles homes appears to show a second person in the vehicle, supporting the fact that a passenger, not the driver, shot M.B.W. Duhart had motive to retaliate against J.S. for stealing the vehicle, even if it seemed counterintuitive that he would destroy his mother's car in the process. Duhart admitted sending messages to help locate the vehicle, which the jury could have interpreted as an attempt to minimize his role. And at his interview, Duhart denied even knowing Catarino, which reflected poorly on Duhart's own credibility given his admission to sending Catarino messages from his family's Facebook accounts.

{¶ 60} We cannot say that the jury clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice requiring reversal of Duhart's conviction. This is not the exceptional case in which the evidence weighs heavily against the conviction. Accordingly, we find Duhart's first assignment of error not well-taken.

B. Flight Instruction

{¶ 61} In his second assignment of error, Duhart argues that the trial court erred in giving the jury an instruction concerning flight as consciousness of guilt. The court provided the following instruction to the jury:

Consciousness of guilt. Testimony has been admitted indicating that the defendant fled the scene and attempted to dispose of evidence. You are instructed that fleeing the scene and/or attempting to dispose of evidence alone does not raise a presumption of guilt, but it may tend to indicate the Defendant's awareness of guilt. If you find that the facts do not support that the defendant fleeing (sic) the scene and/or attempting (sic) to dispose of evidence, or if you find that some other motive prompted the defendant's conduct, or if you are unable to decide what the defendant's motivation was, then you should not consider this evidence for any purpose. However,

if you find that the facts support that the defendant engaged in such conduct and if you decide that the defendant was motivated by an awareness of guilt, you may, but are not required to, consider that evidence in deciding whether the defendant is guilty of the crime(s) charged. You alone will determine what weight, if any, to give to this evidence.

{¶ 62} Duhart concedes that given the evidence concerning the attempted disposal of the car, it was appropriate to instruct the jury concerning disposal of evidence as consciousness of guilt, but he argues that there was no evidence that he took additional steps to evade detection as required for a flight instruction. He cites cases that hold that mere departure from the crime scene does not constitute the “flight” required for a flight instruction.

{¶ 63} Duhart acknowledges that this objection was not raised in the trial court, but he claims that this assignment is still subject to a review for plain error. The State responds, however, that not only did defense counsel not raise the objection, he invited error or waived objection to the inclusion of this language in the jury instruction.

{¶ 64} “[A] waiver occurs where a party affirmatively relinquishes a right or an objection at trial; a forfeiture occurs where a party fails to assert a right or make an objection before the trial court in a timely fashion.” *State v. Huguley*, 2017-Ohio-8300, ¶ 27 (9th Dist.), quoting *State v. Fitzgerald*, 2007-Ohio-701, ¶ 8 (9th Dist.). “An objection that has been forfeited may be assigned as error on appeal if a showing of plain error is made.” *Id.*, citing *Fitzgerald* at ¶ 8. “Where a party has affirmatively waived an objection, however, the error may not be asserted on appeal even if it does amount to plain error.” *Id.*, quoting *Fitzgerald* at ¶ 8.

{¶ 65} Here, the following conversation took place during the charge conference concerning inclusion of “flight” in the consciousness-of-guilt instruction:

The court: Consciousness of guilt. I had sent back some changes that it should be fled the scene and attempt (sic) to conceal a crime. I don’t know that you have any other conduct tha[t] you wish—

The State: State is satisfied with fled the scene and concealed the crime, Your Honor.

The court: The next sentence says you are instructed to describe the Defendant’s conduct. I’m sorry. You are instructed—and it says describe the Defendant’s conduct, which that’s the language that I said I would like to have some agreement on as to how you want that placed.

The State: Your Honor, the State of Ohio would be okay with your instructed (sic) that fleeing the scene and/or attempting to dispose of evidence.

Defense counsel: Yeah.

The court: And then the rest of the sentence alone does not raise presumption of guilt.

The State: Yes, Judge.

The court: Court is in agreement. [Defense counsel]?

Defense counsel: Yes, Your Honor.

The court: Thank you. Same language using the—in the next sentence to describe the conduct.

The State: Yes, Judge.

Defense counsel: Yes, Your Honor.

The court: And later the highlighted language an awareness of guilt, the other choice was consciousness of guilt. Awareness is a more logical everyday language.

The State: State is satisfied with that, Your Honor.

The court: Defense.

Defense counsel: Same.

{¶ 66} Here, Duhart did not merely forfeit his objection by failing to object to the language of the jury instruction—he affirmatively agreed to the language, thereby waiving any alleged error altogether. *See State v. Fitts*, 2020-Ohio-1154, ¶ 22 (6th Dist.) (“Because counsel for Fitts specifically stated that she had no objection to the admission of the audio and video recordings, Fitts has waived the right to claim error.”); *State v. Alley*, 2024-Ohio-115, ¶ 40 (6th Dist.) (“By affirmatively stating no objection to the admission of the recordings at trial, appellant waived his appellate challenge to this admission.”); *State v. Mayes*, 2026-Ohio-1081, ¶ 29-31 (6th Dist.) (finding error waived where defendant asked trial court to “note [his] objection for the record” concerning denial of motion in limine, but then answered “no objection” when the State presented the evidence at trial).

{¶ 67} Because Duhart waived error with respect to the inclusion of the “flight” language in the jury instruction, we find his second assignment of error not well-taken.

C. Ineffective Assistance of Counsel

{¶ 68} In his third assignment of error, Duhart argues that trial counsel was ineffective for failing to object to the flight language in the jury instruction. Again, he argues that there was no evidence that he took additional steps to evade detection as required for a flight instruction. He cites cases that hold that mere departure from the crime scene does not constitute the “flight” required for a flight instruction.

{¶ 69} The State responds that the instruction on consciousness of guilt was appropriate because there was evidence of flight, evidence of hiding evidence, and evidence of an attempt to destroy evidence, after which Duhart provided false statements to officers. It maintains that the jury was instructed that it could determine whether the acts of fleeing and attempting to destroy evidence occurred and if so, what motivated those acts, and the jury was told that if it found that the acts did not occur or that some other motive prompted those acts, it should not consider the evidence for any purpose. The State insists that under the facts of this case, any objection to the instruction would have been meritless, and defense counsel had no obligation to make a meritless objection.

{¶ 70} In order to prevail on a claim of ineffective assistance of counsel, an appellant must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial court cannot be relied on as having produced a just result. *State v. Shuttlesworth*, 104 Ohio App.3d 281, 287 (7th Dist. 1995). To establish ineffective assistance of counsel, an appellant must show "(1) deficient performance of counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Hale*, 2008-Ohio-3426, ¶ 204, citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *State v. Sanders*, 94 Ohio St.3d 150, 151 (2002).

{¶ 71} Evidence of flight is admissible to show a defendant's consciousness of guilt. *State v. Williams*, 79 Ohio St.3d 1, 11 (1997). "Flight means some escape or

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affirmative attempt to avoid apprehension.” (Internal quotations omitted.) *State v. Herrell*, 2017-Ohio-7109, ¶ 24 (6th Dist.), citing *State v. Wesley*, 2002-Ohio-4429, ¶ 19 (8th Dist.); and *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1207 (9th Cir. 1991). To constitute “flight,” the defendant must “appreciate that he has been identified as a person of interest in a criminal offense and is taking active measures to avoid being found.” *State v. Sanchez-Sanchez*, 2022-Ohio-4080, ¶ 177 (8th Dist.), *appeal not allowed*, 2023-Ohio-758. Under such circumstances, the jury could infer that the defendant “‘is avoiding the police only because he or she knows he or she is guilty and wishes to avoid the inevitable consequences of his or her crime.’” *State v. Hennigan*, 2024-Ohio-404, ¶ 50 (11th Dist.), quoting *State v. James*, 2023-Ohio-3524, ¶ 62 (11th Dist.). But “[f]light is more than merely leaving the scene of the crime . . .” because it is “unrealistic to expect persons who commit crimes to remain on the scene for ready apprehension.” *Sanchez-Sanchez* at ¶ 185, citing *State v. Santiago*, 2011-Ohio-3058, ¶ 30 (8th Dist.); *State v. Walter*, 2023-Ohio-2700, ¶ 100 (2d Dist.), quoting *State v. Cargle*, 2019-Ohio-1544, ¶ 48 (2d Dist.) (“[T]o constitute flight, ‘it must be clear that the defendant took affirmative steps to avoid detection and apprehension beyond simply not remaining at the scene of the crime.’”).

Here, there was video and testimonial evidence that after firing at the Hyundai, the Chevy Malibu quickly drove away from the scene to Catarino’s cousins’ house where the guns were stashed in a closet. It could reasonably be inferred that Catarino and Duhart knew police would soon respond to the shooting, thus they took this action to avoid detection and apprehension. There was also testimony that Duhart instructed Catarino to

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drop him off at the casino. It could reasonably be inferred that Duhart understood that police would be searching for the Chevy Malibu and sought to distance himself from the vehicle to avoid detection and apprehension. Finally, there was testimony that Duhart and Catarino ran away when L.L. saw them trying to push the Chevy Malibu into the pond. Under these facts, we cannot say that defense counsel's performance was deficient for failing to object to inclusion of the flight language in the consciousness-of-guilt jury instruction.

{¶ 72} Even if the language in the instruction did warrant objection, we cannot say that there was a reasonable probability of a different outcome had the objection been made and sustained. First, this case did not turn on whether Duhart fled the scene for the purpose of evading police. The real issue for the jury was whether Duhart was ever at the scene in the first place. The video evidence makes clear that the shots were fired from the Malibu. Duhart denied being a passenger in the Malibu when the shooting occurred, despite Catarino and Mercedes's testimony to the contrary. To find that Duhart fled required the jury to first find that Duhart was in the Malibu. If the jury concluded that Duhart was in the Malibu, his conviction was certain regardless of whether his conduct in the immediate aftermath constituted flight.

{¶ 73} Additionally, in *State v. Vasquez*, 2024-Ohio-860, ¶ 82 (6th Dist.), we explained that providing a flight instruction is “neutral in its effect” and “all but innocuous”—i.e., harmless—where the flight instruction states that “(1) any consciousness-of-guilt finding is ‘entirely permissive,’ (2) the instruction only applies if the jury finds that the defendant fled due to his consciousness of guilt, (3) the jury has

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discretion to give consciousness-of-guilt evidence no weight, and (4) fleeing does not create a presumption of guilt.” *Id.*, quoting *State v. Aekins*, 2023-Ohio-322, ¶ 119 (10th Dist.). The flight instruction here provided all these caveats, thus, in any event, its inclusion was harmless.

{¶ 74} We have recognized that where harmless error occurs, it follows that it cannot be shown that there was a reasonable probability of a different outcome for purposes of an ineffective-assistance claim. *State v. Prichard*, 2026-Ohio-56, ¶ 59 (6th Dist.); *State v. Kinney*, 2025-Ohio-1620, ¶ 92 (6th Dist.) (“[W]e have already determined that the admission of those statements was harmless error, thus there was not a reasonable probability that the outcome of the proceedings would have been different had trial counsel objected to those statements.”).

{¶ 75} Accordingly, we find Duhart’s third assignment of error not well-taken.

D. Mistrial

{¶ 76} During the testimony of Andrea Harper, the State’s expert forensic scientist from the Bureau of Criminal Investigations, the State elicited testimony indicating that both Duhart and E.R.’s DNA were in a national database. Duhart objected and moved for a mistrial, arguing that this would lead the jury to infer that Duhart has a felony record. The trial court denied Duhart’s motion. In his fourth assignment of error, Duhart argues that this was error.

{¶ 77} On direct examination by the State, Harper testified that DNA found in the backseat of the Malibu contained a mixture of DNA with one unknown major contributor.

Harper's report, which was admitted into evidence, suggests that the unknown male contributor was E.R., but the State did not ask her this specific question on direct.

{¶ 78} On cross-examination, defense counsel elicited testimony from Harper indicating that she had not been given DNA samples from Duhart or E.R.:

Q: [Y]ou were not able to match any of the items [collected and tested for DNA] to my client, Mr. Duhart, correct?

A: I do not have any DNA profiles that I have attributed to him.

Q: And you received samples from him, right, clean clear swabs as you mention?

A: Standard, yes.

Q: Standard. That's your term.

A: I don't have a standard from him.

Q: No?

A: No.

Q: So you never were offered his DNA in this process?

A: No.

Q: Huh. Okay. How about [E.R.]? He is on your report, both of those reports. Were you ever offered a sample by [E.R.]?

A: No.

{¶ 79} On redirect, the State asked Harper if E.R.'s DNA was in a national database. She said that she "believed so," which prompted the court to point out that without foundation, this question and answer were not proper. The State's attorney asked Harper how she knew that E.R.'s DNA was in a national database. Harper responded that

“[b]ased on the case conversation it was indicated that . . . a data base match had been made to E.R.” She was then asked: “Would it surprise you to learn that Sean Duhart’s DNA is in the same national data base?” Harper responded that nothing surprises her.

{¶ 80} Duhart moved for a mistrial on the basis that this reference to the national database implied to the jury that Duhart has a felony record. He maintained that he was prevented from asking questions about E.R. because to do so would open the door as to why Duhart was in the database. The State responded that it had not said what type of database it was, and it did not intend to ask any additional questions about the database. It argued that a mistrial was an extreme remedy, and it claimed that defense counsel’s questions had opened the door to testimony about the database. Defense counsel insisted that the State had opened the door by including in its exhibit reference to E.R.

{¶ 81} The trial court “acknowledged and accepted” Duhart’s objection to the evidence and struck from the record “any testimony from this witness with regard to any national data bases as we have no foundation set” and “no evidence presented to show that anything was done or looked at.” The court reserved judgment on the motion.

{¶ 82} At the next break, additional argument took place. The court questioned whether a curative instruction should be given, and it posed the possibility of suggesting to the jury that Duhart’s DNA was in the database with respect to a child paternity test. It also pointed out that the jury may have assumed that DNA samples were collected upon Duhart’s arrest. The trial court denied the motion for mistrial, but offered to provide some alternative explanation for Duhart’s DNA being in the national database. Defense counsel declined to have the matter further addressed with the jury.

{¶ 83} We review a trial court’s denial of a motion for a mistrial under an abuse-of-discretion standard. *State v. Osley*, 2018-Ohio-437, ¶ 20 (6th Dist.). An abuse of discretion connotes that the trial court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). An unreasonable decision is one that lacks sound reasoning to support the decision. *Hageman v. Bryan City Schools*, 2019-Ohio-223, ¶ 13 (10th Dist.). “An arbitrary decision is one that lacks adequate determining principle and is not governed by any fixed rules or standard.” *Id.*, quoting *Porter, Wright, Morris & Arthur, LLP v. Frutta del Mondo, Ltd.*, 2008-Ohio-3567, ¶ 11 (10th Dist.). And an unconscionable decision is one “that affronts the sense of justice, decency, or reasonableness.” *Id.*

{¶ 84} On appeal, Duhart complains that “Ohio law, like that of many other states, requires that anyone charged with a felony must submit to a buccal swab, and their DNA is then placed in a national database,” yet the State asked Harper if she would be surprised to learn that Duhart’s DNA was in a national database. He claims that there was no basis for the question, and the State’s sole purpose in asking it was “to intimate to the jury that Duhart had committed prior crimes.” Duhart maintains that this was “a blatant violation of the rule against propensity evidence contained in Evid.R. 404(A),” and was intended by the State to be prejudicial. He insists that his motion for mistrial should have been granted.

{¶ 85} The State responds that the court struck the offending testimony and offered to provide “additional, non-incriminating potential sources of DNA in a national database,” which defense counsel declined. It cites *State v. Townsend*, 2006-Ohio-5457, ¶ 32.

64 (8th Dist.) for the proposition that a passing reference to previous DNA collection does not compel a mistrial.

{¶ 86} In reviewing the testimony here, it appears that defense counsel was trying to drive home the point that Duhart's DNA was not found in the Malibu. He sought to establish that Harper had the swabs collected from the Malibu, as well as sample DNA from Duhart, and was able to determine that Duhart's DNA did not match the DNA found in the vehicle. To defense counsel's apparent surprise ("Huh. Okay."), Harper testified that she had never been provided a DNA standard for Duhart. Harper also did not have a sample for E.R., yet she was able to determine that DNA collected from the backseat of the Malibu belonged to E.R. Surely, this left the jury to wonder how Harper was able to reach these conclusions without DNA samples, prompting the State to elicit testimony explaining that standards were otherwise available. To that end, we disagree with Duhart that the State's sole purpose in asking about the database was "to intimate to the jury that Duhart had committed prior crimes."

{¶ 87} Moreover, consistent with other Ohio cases, we cannot say that the brief reference to Duhart's DNA evidence being available in the national database warranted a mistrial. In *State v. Ford*, 2018-Ohio-5169, ¶ 45 (8th Dist.), the victim testified that "the case was made on DNA evidence," and she recounted a conversation with a detective "after DNA had already come back." Defense counsel objected and the trial court sustained the objection. The defendant argued that a mistrial should have been granted because the mention of DNA evidence was tantamount to telling the jury that the defendant had prior convictions. The Eighth District observed that (1) the defendant had

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not requested a mistrial, and (2) the Ohio Supreme Court has held that a fleeting reference to a prior arrest or conviction, followed by a curative instruction, is not unfairly prejudicial to the defendant. The court found that the victim’s statements only alluded to DNA evidence—they did not explicitly reference arrests and convictions; the statements were stricken from the record after defense counsel objected; any potential prejudice was limited; and the trial court responded appropriately. The court concluded that a mistrial was not warranted.

{¶ 88} In *State v. Garrett*, 2010-Ohio-5431, ¶ 24 (1st Dist.), the defendant contended that the trial court should have prohibited the State and its witnesses from referring to the CODIS database “because any reasonable juror would have concluded that he had been convicted of felony offenses due to the presence of his DNA in the CODIS system.” The First District recognized that (1) the State did not present evidence or argument as to whose DNA profiles were contained in CODIS or how profiles had come to be stored within the database; (2) there was no suggestion by the State that the database contained samples from convicted felons; (3) the jury heard no evidence concerning the defendant’s criminal history; and (4) it was purely speculative that jurors would infer that the defendant’s DNA was in CODIS because he had been convicted of other crimes.

{¶ 89} And in *State v. Townsend*, 2006-Ohio-5457 (8th Dist.), a witness testified that the defendant lived with his grandmother. Defense counsel asked when the defendant had lived there. The witness responded: “When he got out of juvenile or--as a matter of fact, his exact words were, he was in Lorain before. They did the DNA while

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(sic) the second time when he got out.” *Id.* at ¶ 37. The defendant moved for a mistrial, which the trial court denied. On appeal, the State asserted—and the Eighth District agreed—that defense counsel “opened the door” for this response. The appellate court also observed that (1) no particular previous crime was mentioned by the witness; (2) the parties could not speculate as to what the jury inferred from this comment; and (3) the trial court instructed the jury to disregard the answer, and the jury presumably complied.

{¶ 90} As in the cases we have cited, Duhart arguably opened the door to this line of questioning when he elicited testimony indicating that Duhart and E.R. had not provided DNA samples. The reference to the national database was brief, and the trial court struck the testimony, explaining to the jury that the testimony lacked foundation. Finally, as pointed out by Duhart, “Ohio law, like that of many other states, requires that anyone charged with a felony must submit to a buccal swab, and their DNA is then placed in a national database.” *See* R.C. 2901.07(B) and (C). The jury could have just as easily assumed that Duhart’s DNA was maintained in a database not because of a past arrest or conviction, but by virtue of having been arrested on the charges pending before it.

{¶ 91} Accordingly, we find no abuse of discretion in the trial court’s denial of Duhart’s motion for mistrial. Duhart’s fourth assignment of error is not well-taken.

E. The State’s Cross-Appeal

{¶ 92} The State in its cross-appeal argues that the trial court judgment is clearly and convincingly contrary to law to the extent that it lists multiple periods of post-release control: “F-1: 2-5 years; F2: 18 months to 3 years.” The State maintains that in accordance with our decisions in *State v. Thomas*, 2026-Ohio-20, ¶ 56 (6th Dist.), and 35.

State v. Whitney, 2025-Ohio-4978 (6th Dist.), this error should be corrected by a nunc pro tunc judgment listing only the applicable term of post-release control.⁴ We agree with the State.

{¶ 93} At sentencing, Duhart was correctly notified that he would be subject to a mandatory period of post-release control of two to five years, however, the sentencing entry lists other possible terms of post-release control. We have previously held that a sentencing entry that lists various possible terms of post-release control—not just the applicable term of post-release control—is clearly and convincingly contrary to law. *State v. Whitney*, 2025-Ohio-4978, ¶ 20 (6th Dist.). When a defendant is properly notified about post-release control at the sentencing hearing, but that notification is not properly reflected in the sentencing entry, the omission can be corrected with a nunc pro tunc entry. *State v. Qualls*, 2012-Ohio-1111, ¶ 24.

{¶ 94} Accordingly, we find the State’s cross-assignment of error well-taken. We reverse and remand this case for the limited purpose of entering a nunc pro tunc entry that includes only the post-release control term applicable to Duhart.

III. Conclusion

{¶ 95} Duhart’s conviction is not against the manifest weight of the evidence. While there was no physical evidence implicating Duhart, his co-defendants testified that Duhart was the shooter, Duhart had motive to commit the murder, and his co-defendants’ testimony was consistent with evidence detectives had gathered, lending credibility to

⁴ Duhart did not file a brief in response to the State’s cross-appeal.

their version of events. Despite Duhart's argument to the contrary, some deference to the jury's credibility determinations is required in a manifest-weight review. We find Duhart's first assignment of error not well-taken.

{¶ 96} Duhart affirmatively agreed to the "flight" language in the consciousness-of-guilt jury instruction, thereby waiving any alleged error. We find Duhart's second assignment of error not well-taken.

{¶ 97} Counsel was not ineffective for failing to object to the trial court's inclusion of "flight" in the consciousness-of-guilt jury instruction. There was video and testimonial evidence that the Malibu Duhart was riding in quickly drove away from the scene; immediate action was taken to hide the murder weapon; Duhart instructed his co-defendant to drop him off at the casino, likely to distance himself from the Malibu; and Duhart ran away when he was observed trying to push the Malibu into a pond. Even if inclusion of the flight language warranted objection, there was not a reasonable probability of a different outcome had the objection been made and sustained. We find Duhart's third assignment of error not well-taken.

{¶ 98} The trial court did not err in denying Duhart's motion for a mistrial after the State elicited testimony indicating that Duhart's DNA was in the national database. Duhart arguably opened the door to the questioning, reference to the database was brief, the trial court struck the testimony for lack of foundation, and the jury could have inferred that Duhart's DNA was in the database in connection with the present case and not because of a prior arrest or conviction. We find Duhart's fourth assignment of error not well-taken.

{¶ 99} We find the State’s cross-assignment of error well-taken. Because the trial court judgment lists possible terms of post-release control and not just the period applicable to Duhart, the judgment is clearly and convincingly contrary to law. We reverse and remand this case for the limited purpose of entering a nunc pro tunc entry that includes only the post-release control term applicable to Duhart. In all other respects, we affirm the June 17, 2025 judgment of the Lucas County Court of Common Pleas. Duhart is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed, in part,
reversed, in part, and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Gene A. Zmuda, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at: http://www.supremecourt.ohio.gov/ROD/docs/.
