

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 111922  
 v. :  
 :  
 JASHON WILLIAMS, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: July 6, 2023**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-21-660066-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Andrew Boyko, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Francis Cavallo, Assistant Public Defender, *for appellant*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Defendant-appellant Jashon Williams appeals his convictions for aggravated robbery, robbery, grand theft and theft following a jury trial. Williams contends that his convictions were not supported by sufficient evidence and were

against the manifest weight of the evidence. He also contends that the trial court erred in failing to grant a mistrial after one of the state's witnesses heard, and was influenced by, testimony of another of the state's witnesses. He further contends that he was denied the effective assistance of counsel, that cumulative errors committed during the trial deprived him of a fair trial and that the indefinite sentencing provisions of the Reagan Tokes Law are unconstitutional. For the reasons that follow, we affirm.

### **Procedural History and Factual Background**

{¶ 2} On June 4, 2021, a Cuyahoga County Grand Jury indicted Williams and a codefendant, Carlin Rox, in a 24-count indictment. Twenty-two of the counts applied to Williams: two counts of aggravated robbery (Counts 1 and 16), eight counts of robbery (Counts 2-4, 12-13, 17-19), two counts of grand theft (Counts 8 and 23), six counts of theft (Counts 9-11, 14-15 and 24), two counts of improperly handling a firearm in a motor vehicle (Counts 7 and 22) and two counts of having weapons while under disability (Counts 6 and 21). The charges related to an August 7, 2020 crime spree involving three incidents that included the theft of two vehicles — a 2016 Ford Fiesta owned by Daniel Stavarz and a 2000 Jeep Grand Cherokee owned by Diane Clemence — and the theft of personal property belonging to four individuals — Daniel Stavarz and Ashley Holmes at a gas station in Lakewood (the “gas station robbery”), Alma Petkovic in the parking lot of a pharmaceutical services company in Euclid (the “Remedi robbery”) and Diane Clemence in the Aldi

parking lot at Steelyard Commons in Cleveland (the “Aldi robbery”). Counts 1-4, 8-9, 16-19 and 23 included one-year and three-year firearm specifications.

{¶ 3} Williams pled not guilty to all charges, and the case proceeded to trial against Williams.<sup>1</sup> Counts 6 and 21, the having-weapons-while-under-disability charges, were tried to the bench. The remaining counts were tried to a jury.

{¶ 4} Trial commenced on July 11, 2022. The state presented testimony from 15 witnesses at trial, including Rox, the alleged victims (Stavarz, Holmes, Petkovic and Clemence), Williams’ mother (Markea Carr) and numerous law enforcement officers. No witnesses testified on behalf of the defense. A summary of the relevant evidence follows.

### **Testimony by the Victims**

{¶ 5} Stavarz testified that in the late evening of August 6, 2020 or early morning of August 7, 2020, he picked up his girlfriend, Ashley Holmes, from work. The couple purchased food from a Taco Bell restaurant and then stopped at a nearby gas station, Franklin Gas & Mart (the “gas station”), located on the corner of Franklin and W. 117th Street in Lakewood, so Holmes could buy cigarettes. Stavarz parked his vehicle — a 2016 Ford Fiesta (the “Ford Fiesta”) — at a pump and Holmes went inside. While waiting for Holmes to return, Stavarz exited the car to throw away some trash. As he was getting back into his car, a “tall male” “rushed up” on his driver’s-side door, pointed a “silver like revolver type” gun at him and told him

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<sup>1</sup> Rox reached a plea agreement with the state.

to get out of the car. Stavarz said that he turned his body to look at the perpetrator, then exited the vehicle, keeping his hand on the driver's-side door. Stavarz testified that the perpetrator got into the driver's seat and another male got into the front passenger's seat. Stavarz stated that he asked the perpetrator whether he was stealing his car and the perpetrator again pointed the gun at him. Stavarz said that he then let go of the door, stepped back and the men drove off in his vehicle. Stavarz stated that although it was a "quick interaction" and that his "focus" was later "on the gun," he saw the perpetrator's face "directly" twice — when the perpetrator first pointed the gun at Stavarz and told him to get out of the car and when the perpetrator pointed the gun at him as Stavarz was "holding onto the door staring straight at him" after the perpetrator sat in the driver's seat. Stavarz indicated that the perpetrator was wearing a "black like \* \* \* athletic wear jacket" with the hood "pulled along the sides." "Without hesitation," Stavarz identified Williams in court as the man who had pointed the gun at him and stolen his vehicle.

**{¶ 6}** Stavarz testified that he did not know whether the gun was loaded but that he thought it was loaded or "else I probably wouldn't have listened to him." Stavarz stated that after the men left with his vehicle, he called the police on his cell phone and went inside the gas station to see if there was surveillance footage of the incident. Stavarz described the events depicted in surveillance video footage of the incident as the state played the videos for the jury.

**{¶ 7}** Stavarz testified that his wallet (containing his driver's license, credit and debit cards, gift cards and a little cash), his girlfriend's purse (containing her

wallet, phone, cash, etc.) and some other “random stuff” were in the vehicle at the time it was stolen.

{¶ 8} Holmes testified that on August 7, 2020, she and her then-boyfriend, Stavarz, stopped at a gas station so Holmes could get some cigarettes. Holmes stated that she went inside the store with her identification card and debit card to make a purchase and left her purse with her wallet and cell phone in the car. She indicated that she was only in the store for a few minutes before Stavarz came inside the store. She stated that Stavarz appeared “[f]rantic” and “[a] little scared” and that he asked a store employee whether the store had surveillance cameras. The police were called and responded to the scene. Holmes testified that she did not personally observe the theft of the Ford Fiesta. She identified a photograph of a wallet police recovered from the Ford Fiesta after the robbery as her wallet.

{¶ 9} Petkovic testified that at approximately 5:15 a.m. on August 7, 2020, she parked her car, a Lexus NX, in the parking lot of Remedi SeniorCare (“Remedi”) in Euclid, where she worked as a pharmacy technician. She exited her vehicle and started walking towards the entrance. As she did so, a male “came from behind [her] very fast” and “asked for the keys.” She stated that she told the male she was not going to give them to him and continued toward the building. She testified that the male then said, “Give me your purse,” and grabbed her purse, a “[b]ig, white purse,” out of her hand. Petkovic stated that he grabbed her purse so hard, she fell. Petkovic testified that the male started running toward a parked car and she got up and ran after him. When she got close, the male pushed her, she fell a second time, and the

vehicle “reversed and took off.” Petkovic stated that she then went into the building and asked her colleagues to call the police. She indicated that, at the time her purse was stolen, it contained among other items, her identification, her wallet, her credit cards, some cash, her reading glasses, sunglasses and an email from her boss. When police arrived, she told them what had happened.

{¶ 10} Petkovic testified that she saw the perpetrator, who was wearing a hoodie, for “just a couple seconds” and that she could not identify the perpetrator. Petkovic identified and described surveillance video footage and still images depicting her vehicle and the robbery. Petkovic also identified photographs of her injuries from the incident, i.e., bruises and scratches, and photographs of her reading glasses, sunglasses, glasses cases and a printout of an email message that was in her purse at the time it was stolen, which were later found by police in the Ford Fiesta.

{¶ 11} Clemence testified that she pulled into the Aldi parking lot at Steelyard Commons at approximately 5:40 a.m. on August 7, 2020 on her way to work as a stocker. Clemence stated that she waited in her car, a grey 2000 Jeep Grand Cherokee Laredo (the “Jeep”), for a few minutes until the store lights turned on. While she was waiting, a coworker pulled into the parking lot and a third vehicle arrived, a black car, small or midsize, with two men inside, “one in the front, one in the back.” Clemence did not recognize the third vehicle and assumed it was someone dropping off another coworker. Clemence testified that, when the store lights turned on, Clemence and her coworker exited their vehicles and walked towards the store

and the person who had been in the front seat of the third vehicle exited the third vehicle. Clemence testified that, suddenly, a “young kid” was standing next to her, with a gun in his hand, demanding her keys. Clemence stated that his left arm “got around” her and that she extended her right arm and put her right hand on the perpetrator’s right hand because she did not want him pointing the gun at her. The pair “struggled” for “not even maybe less than a minute” and the perpetrator grabbed her keys, jumped into her vehicle and drove off, heading east. Clemence described the perpetrator as a “very young age looking” African-American male with no distinguishing marks on his face. She indicated that he had “very short hair,” was a few inches shorter than she was and was thin.

**{¶ 12}** Clemence stated that as she was interacting with the perpetrator, she “glanced over” at the third vehicle and observed that the person who had been in the back seat got out of the car and moved into the driver’s seat. The third vehicle left the scene “right behind” the Jeep.

**{¶ 13}** Clemence testified that she got into her coworker’s car and called the police “right away.” Clemence testified that the police arrived within 10-15 minutes and that she told them what had happened. Clemence stated that police called her later that day and told her they had found her Jeep and that it was “pretty banged up.” Clemence testified that, when her car was stolen, it contained her purse (with lighters, cigarettes, various beauty items and “random silly things”), work clothes and other items.

{¶ 14} Clemence identified and described surveillance video footage that captured the vehicles arriving at the store and the robbery. She also identified a photograph of a set of Jeep keys police later found in the Ford Fiesta as the keys to her Jeep.

### **Testimony by Responding Officers**

{¶ 15} Lakewood police officer Dan Maher was one of the officers who responded to a call of a vehicle taken at gunpoint at the Franklin Gas & Mart on August 7, 2020. He testified that he spoke with Stavarz and Holmes and gathered information regarding the stolen Ford Fiesta so that it could be communicated to other officers who were out looking for the vehicle. He stated that he learned that three males were involved, that the Ford Fiesta had been taken at gunpoint, that the Ford Fiesta had left prior to his arrival and that money, a phone and a wallet were among the items in the vehicle at the time it was stolen. Maher indicated that the witnesses provided a “very vague description” of the suspects, i.e., three African-American males between the ages of 17 and 25.

{¶ 16} Maher testified that he spoke with the store manager, who was unable to access the store’s surveillance cameras at that time, but that his lieutenant was able to pull surveillance footage from city cameras that showed the Ford Fiesta with two males stop and pick up a third male who ran to the car before leaving the scene. He stated that, using city cameras, they were able to track the Ford Fiesta as it traveled through the city until it turned onto a side street that had no cameras.



{¶ 17} Euclid patrol officer Greg Costello was one of the officers who responded to a call reporting the Remedi robbery. He testified that when he arrived on the scene, a group of employees was consoling another employee, Petkovic, who had been robbed. He stated that Petkovic was crying, was “very scared, shaken up” and had some visible injuries, including scrapes on her arms, face or neck. He indicated that he had some difficulty communicating with Petkovic due to a language barrier and called Petkovic’s daughter, who came to the scene and helped Costello communicate with her mother. Costello stated that Petkovic described the perpetrator as a black male wearing dark-colored jeans and a hoodie with a “logo” on it. She identified the contents of her purse that had been stolen, including her wallet, driver’s license and credit card. Costello testified that he photographed Petkovic’s injuries and reviewed surveillance footage of the parking lot obtained from Remedi, which was again played for the jury. In examining the video footage, he observed that a “dark colored hatchback” and at least two individuals were involved in the robbery — i.e., “somebody got out of the car, committed the robbery, then got back in the car and there was a driver who stayed there.” He stated that the video did not show the “actual robbery” because a tree obstructed the view.

### **Testimony by Codefendant**

{¶ 18} Carlin Rox, Williams’ alleged accomplice, testified that on August 7, 2020, he got a tattoo at a home located in the area of E. 50th Street and Fleet Avenue. After he got his tattoo, he was “hanging out” and began talking with Williams and a

“[k]id named Cody” about “some little situations” they had “going on” and their need to “make some money.” Rox identified Williams in court.

**{¶ 19}** Rox testified that the three young men decided to “basically go rob people.” He stated that he had just met Williams and Cody that day and that he (at age 19) was the “oldest of the bunch,” but denied that he was “the boss” or was “running the show.”

**{¶ 20}** Rox testified that the three men walked to the E. 55th Street rapid station and took the rapid to the W. 117th Street stop in Lakewood, across from a Taco Bell restaurant. Rox identified himself, Cody and Williams in still images from surveillance footage of the gas station robbery. Rox stated that he was wearing a white hoodie, Cody was wearing a black hoodie and Williams was wearing a black, white and red or orange hoodie. Rox stated that the men walked around for a bit because police “kept rolling by,” then returned to the gas station “[b]ecause if you want to get a car, you go to the gas station.”

**{¶ 21}** The state played surveillance video footage of the gas station robbery as Rox described what occurred. Rox testified that the three men saw a car leave Taco Bell and park at the gas station. He stated that Williams tried to hand him a gun, a small “Deuce Deuce” silver revolver with black duct tape around it, but that he refused the gun and said, “I ain’t robbing them.” Rox said that he knew the gun was loaded because they “checked” the gun before they left. Rox testified that the female went inside the store and that the male got out of the car and threw something away. Rox testified that Williams ran over to the gas station, “put the gun

in [the victim's] face" and "got in the car." He stated that Williams told the victim to "[g]et out of the car" and to get "back back" as Williams pointed the gun towards the victim. Rox indicated that Williams was "[l]ooking in his face" as he spoke to the victim.

**{¶ 22}** Rox stated that he ran into the parking lot after Williams and got into the Ford Fiesta. Cody ran down the street and Williams and Rox picked him up as they drove off. Rox testified that after they were all in the car, they "put the GPS in," "rolled down some streets" to the next exit and went to a gas station to get gas. They then returned to the house on E. 50th Street and Fleet Avenue but, because "nothing [was] going on," left and drove to Rox's aunt's house in Maple Heights to see his cousins, then went to "[Williams'] people[']s house."

**{¶ 23}** Rox testified that the three men continued "running around" in the Ford Fiesta. Rox stated that he did not know how to drive and that Williams was driving the Ford Fiesta. Rox indicated that while they were driving around, the men noticed a woman leaving her house going to work. Rox testified that they saw "the woman coming out," with "a nice purse, big house, nice whip" in a new "cherry" Volkswagen truck and that they followed her vehicle for approximately 15 minutes until they ended up in Euclid. Rox stated that they parked near the woman's vehicle and waited several minutes until the woman exited her vehicle. The state played surveillance video footage of the events leading up to the Remedi robbery, and Rox described what occurred, identifying Williams as the male depicted in the video wearing "black and red" with "brick" colored shoes.

**{¶ 24}** Rox testified that Williams ran up to the woman and took her purse, but that the woman followed Williams. He stated that the woman “got to fighting me,” “trying to get her stuff back” and “wasn’t going” but Williams “had the gun in his hand with the trigger.” He stated that the woman followed Williams back to the car and that she was “attacking” and “beating” Williams through the open car door.

**{¶ 25}** Rox testified that Williams backed up the Ford Fiesta. As he did so, the woman “fell out of the car” and he “basically ran over her” as they left. Rox indicated that the woman’s purse contained \$140 in cash and her keys.

**{¶ 26}** Rox testified that the group next decided to go to the Aldi store at Steelyard Commons because Rox was familiar with the setup for its security cameras, i.e., that based on the way they are positioned, certain cameras “can’t tell what’s going on.” Once again, the state played surveillance footage of the Aldi robbery and Rox described what occurred.

**{¶ 27}** Rox testified that Williams got out of the Ford Fiesta and approached a woman. He stated that the woman said, “Don’t kill me,” and ran off and that Williams then stole her Jeep. Rox stated that he and Cody followed the Jeep in the Ford Fiesta, returned to Fleet Avenue and raced up and down Fleet Avenue and side streets in the two vehicles. Rox testified that later that morning, Williams called him and told him that he had “crashed” the Jeep at the end of E. 50th Street after the transmission or engine “went out.” The state introduced surveillance video footage and still images retrieved from a homeowner’s surveillance camera showing the Jeep traveling around city streets, a Ford Fiesta following the Jeep and a couple of

hooded figures (which Rox identified as himself and Williams) next to the Jeep after it “crashed.” Rox testified that over the next several days, Williams continued to drive the Ford Fiesta, helping Rox, who worked for a Papa John’s pizza shop, make pizza deliveries. Rox testified that a Papa John’s receipt police recovered from the Ford Fiesta was from one of those pizza deliveries.

**{¶ 28}** Rox was apprehended on August 11, 2020 after the Ford Fiesta was involved in a crash in Garfield Heights. Rox testified that, at the time of the crash, he was in the vehicle with Williams and an unidentified female. Rox stated that everyone fled the scene and that he was chased down, tased and ultimately arrested by Garfield Heights police.

**{¶ 29}** Following his arrest, Rox cooperated with police and was interviewed by several detectives. Rox stated that he spoke with police because he “knew that was the right thing to do, because [he] knew people got hurt, a lot of things.” Rox testified that he spoke with Lakewood Detective Jeffrey Roda and other detectives and told them what had happened. Rox stated that he showed Roda where Cody and Williams resided and photographs or videos that had been posted on Instagram in which Williams and Cody were allegedly wearing the same clothing they had been wearing at the time of the robberies.

**{¶ 30}** Rox acknowledged that he had been previously convicted of burglary and receiving stolen property, that he went to “juvenile prison” at age 15 and that he had just been released from the custody of the Ohio Department of Youth Services in June 2020. Rox testified that he had reached a plea agreement with the state and

had pled guilty to aggravated robbery, robbery and aggravated theft with an “open sentence,” i.e., with no guarantee as to what sentence would be imposed, in exchange for the dismissal of the remaining counts against him.

### **Testimony by Williams’ Mother**

{¶ 31} Markea Carr, Williams’ mother, testified that on September 2, 2020, a police officer showed her a photograph of three males (i.e., a still image from the surveillance footage of the gas station robbery), asked her if she knew that “Jashon had got robbed that day” and inquired whether she could identify anyone in the photograph. She stated that she told the officer that the photograph was “blurry” and that he “had to excuse me because I was intoxicated at the time” but that she “probably could figure out” whether one of the males was Williams because she knew his clothes and knew “people in the neighborhood who wore them.” With regard to her level of intoxication, Carr testified that, prior to speaking with police, she had had “[a] few beers, maybe a shot of liquor, and [had] smoked some marijuana.” She indicated that, because the image was “blurry” and she could not see the men’s faces, she was initially “leaning toward someone else” (i.e., pointing to one of the other two males shown on the right side of the still image) but then recognized the pants on one of the males and told the officer, “[I]t was Jashon [sic] pants.” Carr stated that the pants actually belonged to someone else but that she had previously seen them at her house. After watching a videotape of the statement she had previously given to police to refresh her recollection, Carr indicated that she had previously identified the male standing on the left in the still image taken from

the surveillance footage of the gas station robbery, i.e., the male wearing a black hoodie with a multi-colored design on the front, dark pants and light-colored shoes, as Williams, to the officer.

**{¶ 32}** Carr testified that, prior to her trial testimony, at approximately 6:00 or 7:00 a.m. that morning, she had smoked one blunt (i.e., approximately three marijuana joints), drank a 24-ounce can of Miller High Life and had a shot of 1800 tequila. She claimed that her “high” was gone and that she was “thinking clearly” at the time of her trial testimony. When asked, on cross-examination, whether she still believed that the male she had previously identified in the still image as Williams was, in fact, Williams, Carr responded that, based in part on her own belief and based in part on Rox’s trial testimony, she believed the male was Williams. However, she acknowledged that if she had not heard Rox’s trial testimony, she “probably wouldn’t have been sure.”

### **Testimony by Investigating Officers**

**{¶ 33}** Lakewood police officers William McCarthy and John Winters “processed” the Ford Fiesta on August 11, 2020 after it was recovered by police. Winters photographed the vehicle and its contents while McCarthy collected DNA samples from inside the vehicle, lifted latent prints from the vehicle’s exterior and searched the vehicle for personal items or other types of evidence. Winters testified that the vehicle had disabling front-end damage from some type of motor vehicle accident. The officers indicated that the personal items collected from the Ford

Fiesta included Holmes' wallet, a set of house keys, a set of Jeep keys and a receipt from a Papa John's pizza restaurant dated August 10, 2020.

**{¶ 34}** Euclid Detective Dave Carpenter was assigned to investigate the Remedi robbery. He identified surveillance footage and still images he collected during his investigation and described them for the jury. Carpenter stated that the surveillance footage and still images of the Remedi robbery showed the arrival of the perpetrator in a Ford vehicle with a burnt out taillight, the suspect running towards the victim, the suspect and victim fighting over her purse, the suspect (wearing a "red and white sweatshirt") running off with the purse and the victim running after the suspect and the Ford vehicle. Carpenter testified that shortly after the incident, Roda contacted him and advised him that Petkovic's credit cards had been found inside a Ford Fiesta that was involved in a vehicle pursuit that had ended in Garfield Heights.

**{¶ 35}** Cleveland Detective Robert Norman was assigned to investigate the Aldi robbery. He testified that Clemence had informed him that two young, slender African-American males, armed with firearms, arrived in the Aldi parking lot in a "smaller black vehicle," stole her keys at gunpoint and fled the area in her Jeep. Norman stated that he learned that the Jeep had been found in the area of E. 50th Street and Chard Avenue shortly after the incident and obtained surveillance footage from a homeowner who lived in that area and from Steelyard Commons, where the robbery occurred. Norman identified the surveillance footage and still images he had obtained and described what he observed as the state played the videos and



showed the images to the jury. With respect to the surveillance video footage obtained from the homeowner, Norman stated that the videos showed the Jeep, at approximately 6:15 a.m. on August 7, 2020, traveling at a high rate of speed followed, “moments after,” by the Ford Fiesta. He indicated that the footage later showed the Jeep “parked in the middle of the street,” a person exit the vehicle, the Ford Fiesta pull up behind the Jeep and two people — i.e., “same cars, same people” — leaving the area in the Ford Fiesta.

**{¶ 36}** Norman testified that after he learned of the gas station robbery, he contacted Lakewood police and obtained information regarding that robbery, including a description of the stolen vehicle, still images and surveillance video footage from the gas station robbery and names, descriptions and social media identifiers for the suspects. Norman stated that he compared that information with the information he had from the Aldi robbery to “see if we can make any matches on what we have, given \* \* \* that they were the same day, with the same vehicles involved and the same suspect descriptions.”

**{¶ 37}** After learning that the Ford Fiesta had been recovered, that the keys to Clemence’s Jeep were found inside the Ford Fiesta when it was recovered and that Rox, who had been in the Ford Fiesta, had been arrested, Norman interviewed Rox. He then “proceeded forward” with his investigation “based on new leads” learned through that interview.

**{¶ 38}** Norman stated that after closely examining and comparing the surveillance footage and still images from the Lakewood gas station robbery, the

surveillance footage and still images he collected related to the Aldi robbery and images from the suspects' social media accounts, he identified each of the suspects and concluded that the individuals involved in the Lakewood gas station robbery were the same individuals involved in the Aldi robbery. He noted that the surveillance footage from the gas station robbery showed a male (who had been previously identified as Williams) wearing "a multi-colored sweatshirt" and that surveillance footage from E. 50th Street and Chard Avenue (where the Jeep was "dumped") showed "the same male" standing outside the Jeep "wearing the same pattern on his clothing."

**{¶ 39}** Norman testified that, as part of his continuing investigation, he went to Williams' mother's house and, employing "a ruse," showed Carr various still images, including a still image from the surveillance footage of the Lakewood gas station robbery, and asked her whether she could identify any of the males shown in the image. Norman stated that Carr identified the male on the left, who was wearing "teared jeans on his right leg, light-colored shoes [and] a multi-colored pattern on the jacket," as Williams. Norman claimed that Carr was in "fair condition" at the time of her identification of Williams and that she did not appear to be intoxicated. Norman then obtained a warrant for Williams' arrest.

**{¶ 40}** Lakewood Detective Jeffrey Roda was assigned to investigate the gas station robbery. He testified that at 9:00 a.m. on August 7, 2020 — approximately nine hours after the robbery — he went to Franklin Gas & Mart and obtained surveillance video footage depicting the robbery. Roda identified and described the

events depicted in the videos and images as the state showed them to the jury. Roda indicated that the videos and images depicted three suspects in the gas station robbery: (1) a male wearing black clothing and blue shoes, (2) a male “with a hooded sweatshirt on that is white, kind of has black and gray around the elbow area” and (3) a male wearing a “multi-colored almost like a track jacket with a hood on it” with “a zip up the front,” “white, red, blue at the bottom, and white along the sleeve” and “lighter color shoes.”

{¶ 41} Roda testified that he used images from the surveillance videos to create a be-on-the-lookout flier that he distributed to Lakewood police officers and other agencies. He stated that Norman was one of the first persons to receive and respond to the flier. Roda testified that after he learned the Ford Fiesta had been recovered by Garfield Heights police following a crash, that Rox had been in the Ford Fiesta at the time of the crash and that Rox was in police custody, he scheduled an interview with Rox.

{¶ 42} Roda testified that Rox was “eager” to speak to him and “tell his side of it.” He stated that Rox admitted that he was the male in the white hoodie seen in the surveillance video footage from the gas station robbery. Roda stated that Rox identified the other two suspects (later identified as Williams and Cody) by their “street names” and used Roda’s phone to log into Rox’s Instagram account and provide Roda with their Instagram screen names. Using a Google map, Rox also showed Roda where Williams and Cody lived.

**{¶ 43}** Roda stated that he monitored and recorded activity on the suspects' Instagram accounts and used the information Rox provided to research potential addresses for the other two suspects. Roda identified an Instagram highlight video showing images, posted on August 25, 2020, of Williams wearing a hoodie that resembled the multi-colored hoodie worn by the armed perpetrator in the gas station robbery.

**{¶ 44}** Roda stated that Rox told him that Williams had used a black .38 revolver with black tape on the handle in the robberies and that the Jeep Williams stole was brown. After interviewing Rox, Roda went to the Papa John's location where Rox allegedly worked and obtained surveillance footage. Although Rox had testified that he could not drive, Roda stated that surveillance footage from August 10, 2020 showed Rox driving the Ford Fiesta into the Papa John's parking lot and getting out of the vehicle, carrying a pizza bag, alone.

**{¶ 45}** At Roda's request, Richard Johnson, a digital forensic examiner for the Westlake Police Department, used forensic tools to extract data from an iPhone 7 believed to belong to Williams, including two video files created on April 28, 2020, which the state introduced into evidence. Roda testified that the files showed Williams in front of a mirror taking a picture of himself wearing clothing that resembled the clothing worn by the armed perpetrator in the gas station robbery.

**{¶ 46}** Roda stated that after learning of the Remedi and Aldi robberies, he contacted Norman, Carpenter and Petrovic's daughter to determine what had been taken in the robberies. He indicated that Norman disclosed that a set of Jeep keys

were missing following the Aldi robbery and that Petrovic's daughter had disclosed that her mother's prescription glasses, sunglasses, glasses cases and house keys were missing following the Remedi robbery. Because he then had more information than Winters and McCarthy had had when they processed the Ford Fiesta, Roda returned to the location where the Ford Fiesta was being held and photographed and retrieved a number of other items from the Ford Fiesta. Roda testified that among the items found inside the Ford Fiesta when it was recovered were eyeglasses, sunglasses, glasses cases and house keys belonging to Alma Petkovic and keys to the Jeep belonging to Clemence.

{¶ 47} Roda testified that although DNA swabs and fingerprints were collected from the Ford Fiesta, no fingerprints or DNA evidence was linked to Williams.

{¶ 48} At the conclusion of the state's case, Williams made a motion for a judgment of acquittal on all counts pursuant to Crim.R. 29. The trial court denied the motion. Williams rested without presenting any evidence and renewed his Crim.R. 29 motion. Once again, the trial court denied the motion.

### **Verdicts and Sentencing**

{¶ 49} The jury found Williams guilty on all counts except Counts 7 and 22, improperly handling firearms in a motor vehicle. The trial court found Williams not guilty on Counts 6 and 21, having weapons while under disability.

{¶ 50} At sentencing, Counts 1, 2, 3, 4, 8, 9 and 10 were determined to be allied offenses that merged for sentencing, and the state elected to proceed to

sentencing on Count 1. Counts 12, 13, 14 and 15 were determined to be allied offenses that merged for sentencing, and the state elected to proceed to sentencing on Count 12. Counts 16, 17, 18, 19, 23 and 24 were determined to be allied offenses that merged for sentencing, and the state elected to proceed to sentencing on Count 16. The trial court held that the one-year firearm specifications in Counts 1 and 16 merged into the three-year firearm specifications on each count. Accordingly, Williams was sentenced on Counts 1, 11, 12 and 16 as follows:

- On Count 1 — a three-year sentence on the three-year firearm specification to be served prior to and consecutive to an indefinite sentence (imposed under the Reagan Tokes Law) of a minimum of four years and a maximum of six years on the underlying offense;
- On Count 11 — 180 days;
- On Count 12 — two years; and
- On Count 16 — a three-year sentence on the three-year firearm specification to be served prior to and consecutive to a four-year sentence on the underlying offense.

**{¶ 51}** The trial court ordered that the sentences on the underlying offenses in Counts 1 and 16 and the sentences on Counts 11 and 12 be served concurrently and that the three-year sentences on the firearm specifications in Counts 1 and 16 be served consecutively to each other and prior to and consecutive to the indefinite sentence on the underlying offense in Count 1, resulting in a total aggregate sentence of 10 to 12 years.

**{¶ 52}** Williams appealed, raising the following six assignments of error for review:

Assignment of Error I:

The trial court erred in failing to grant a mistrial after it became clear that a fair trial was no longer possible; by not issuing a separation of witnesses order at the outset of proceedings, a state's witness had their testimony improperly influenced by hearing the testimony of an earlier witness.

Assignment of Error II:

Appellant was denied the effective assistance of counsel under the Sixth Amendment, when his attorney failed to move for a separation of witnesses order at the outset of trial.

Assignment of Error III:

There was insufficient evidence produced at trial to support a finding of guilt on all counts.

Assignment of Error IV:

The jury lost their way by finding the defendant guilty against the manifest weight of the evidence.

Assignment of Error V:

The cumulative errors committed during the trial deprived the appellant of a fair trial.

Assignment of Error VI:

The sentence of the court imposing an indefinite term of incarceration pursuant to S.B. 201 (The "Reagan Tokes Act") is unconstitutional.

## **Law and Analysis**

### **Motion for a Mistrial**

{¶ 53} In his first assignment of error, Williams contends that the trial court erred in failing to order a mistrial after it was discovered that one of the state's witnesses — Markea Carr, Williams' mother — had been in the courtroom and heard the testimony of other of the state's witnesses (specifically, the testimony of Williams' codefendant, Rox) before she testified. Williams contends that Carr's testimony "compromised the fairness of the trial" and "should have been grounds

for a mistrial” because her testimony — in which she identified Williams in a still image from the gas station robbery — was prejudicial to Williams. Williams argues that Carr was improperly influenced by Rox’s testimony to make a positive identification of Williams and that “[h]ad that influence been absent, she likely could not and would not been able to do so.”

**{¶ 54}** A trial court has the authority to order witnesses for trial to be separated. Evid.R. 615 governs the separation of witnesses. Evid.R. 615(A) states:

Except as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. An order directing the ‘exclusion’ or ‘separation’ of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses.

**{¶ 55}** “The separation of witnesses under Evid.R. 615 is designed to ensure that a witness’s testimony is based upon his or her personal knowledge rather than being influenced by what he or she hears from another witness’ testimony.” *State v. Gomez*, 6th Dist. Lucas No. L-17-1130, 2019-Ohio-576, ¶ 62; *see also State v. Waddy*, 63 Ohio St.3d 424, 434, 588 N.E.2d 819 (1992) (“The purpose of a separation order is ‘so that [witnesses] cannot hear the testimony of other witnesses,’ Evid.R. 615, and tailor their own testimony accordingly.”).

**{¶ 56}** In this case, no request was made by either party for the separation of witnesses and the trial court did not sua sponte order the separation of witnesses at the outset of the trial.



**{¶ 57}** On the second day of trial, prior to Carr's testimony, it was discovered that Carr had been in the courtroom during the testimony of other witnesses. It is unclear from the record precisely how, when or by whom it was first discovered that Carr was in the courtroom during the testimony of other witnesses or how long she had been in the courtroom prior to her testimony.

**{¶ 58}** Williams' counsel moved to exclude Carr's testimony. In response, the prosecuting attorney asserted that Carr had been subpoenaed to testify but that he had never met her, did not realize she was in the courtroom and did not consent to, connive in, procure or have knowledge of her presence during the testimony of other witnesses. After hearing argument from the parties, the trial court denied the motion to exclude Carr's testimony and permitted her to testify. The trial court indicated that defense counsel could inquire, during cross-examination, about the fact that Carr was in the courtroom during Rox's testimony if he believed any testimony Carr provided on direct examination was impacted by that testimony. The trial court also indicated that it would give a jury instruction addressing the issue and ordered the separation of witnesses going forward.

**{¶ 59}** On direct examination, the state inquired regarding Carr's identification of Williams as one of the perpetrators shown in a still image taken from the surveillance footage of the gas station robbery, during a police interview on September 2, 2020.

**{¶ 60}** On cross-examination, Williams' counsel questioned Carr regarding her intoxication level when she identified Williams to police. He also questioned

Carr regarding her substance use on the morning of trial, whether she still believed, at the time of trial, that Williams was the person she had previously identified in the still image from the gas station robbery and whether that belief was based on her own personal knowledge or based on the testimony of other witnesses she had heard in court that morning. With respect to the effect of Rox's testimony on her own testimony, Carr testified:

Q. Now, this is two years ago. Looking at today, do you think that is your son in the picture?

A. You can't see no face, but I'm going to go with everybody else. They saying it's —

THE COURT REPORTER: I'm sorry, I'm going to go with everybody else what?

A. I mean, they saying it's him, so I'm going to say it's him.

Q. Well, hold up now. Did you hear someone say it was him when you were in the courtroom earlier today? You're saying they saying it's him. Who is they?

A. The other witness.

Q. So you heard the other witness say that was him?

A. Yes.

Q. So are you basing what you're saying today off of the testimony you heard here today when you were sitting in here?

A. Yes. I'm combining them together.

Q. So who did you hear say that that was Jashon?

A. Mr. Rox.

Q. Okay. Do you know Mr. Rox personally?

A. No.

Q. Have you ever met him?

A. No.

Q. And where did you hear Mr. Rox say that that was him?

A. Here today in court.

Q. And where were you at?

A. Sitting in the back next to my sister.

Q. So you were paying attention and listening to what Mr. Rox had to say?

A. Somewhat, yes.

Q. So based off of your own knowledge and what you see here today, who do you think — do you know who that is in that photo?

A. Jashon.

Q. That's based off of your own belief or what Mr. Rox said?

A. It's both. It's off part my belief and — too bad you all can't do the whole video of the police thing.

Q. So it's part of what you believe, you're saying?

A. Yes.

Q. And part of what Mr. Rox said?

A. Yes.

Q. So if you hadn't heard Mr. Rox's testimony —

A. I probably wouldn't have been sure.

The trial court told the state it would not be permitted to conduct any redirect examination of Carr, concluding that “enough damage [had been] done by her and what she heard in the courtroom.”

{¶ 61} At the conclusion of Carr’s testimony, Williams moved for a mistrial. The trial court denied the motion. Williams renewed his request for a mistrial during Roda’s testimony after Roda mentioned reviewing “booking photos” of Williams from juvenile court. Williams argued that the “cumulative effect” of Carr basing her identification of Williams on Rox’s testimony and the implication that Williams had a criminal history based on Roda’s reference to “booking photos” warranted a mistrial. Once again, the trial court denied the motion.

{¶ 62} The decision to grant or deny a motion for mistrial lies within the sound discretion of the trial court. *State v. Taylor*, 8th Dist. Cuyahoga No. 111694, 2023-Ohio-928, ¶ 38; *State v. Miller*, 8th Dist. Cuyahoga No. 100461, 2014-Ohio-3907, ¶ 36, citing *State v. Garner*, 74 Ohio St.3d 49, 59, 656 N.E.2d 623 (1995). This is “in recognition of the fact that the trial judge is in the best position to determine whether the situation in his [or her] courtroom warrants the declaration of a mistrial.” *State v. Glover*, 35 Ohio St.3d 18, 19, 517 N.E.2d 900 (1988). “A mistrial should not be ordered in a criminal case merely because some error or irregularity has intervened.” *State v. Robinson*, 8th Dist. Cuyahoga No. 110883, 2022-Ohio-1940, ¶ 31, quoting *State v. Reynolds*, 49 Ohio App.3d 27, 550 N.E.2d 490 (2d Dist.1988), paragraph two of the syllabus. A mistrial is warranted only when “the

ends of justice so require and a fair trial is no longer possible.” *Taylor* at ¶ 38, quoting *State v. Franklin*, 62 Ohio St.3d 118, 127, 580 N.E.2d 1 (1991).

**{¶ 63}** The “essential inquiry” in ruling on a motion for a mistrial is “whether the substantial rights of the accused or the prosecution are adversely or materially affected.” *Robinson* at ¶ 31, quoting *State v. Wilson*, 8th Dist. Cuyahoga No. 92148, 2010-Ohio-550, ¶ 13. We will not disturb a trial court’s denial of a defendant’s motion for a mistrial “absent a showing that the accused has suffered material prejudice.” *State v. Joseph*, 8th Dist. Cuyahoga Nos. 111276, 111277 and 111278, 2022-Ohio-4404, ¶ 63, quoting *Miller* at ¶ 36.

**{¶ 64}** In determining whether a mistrial is warranted, the exercise of sound discretion generally requires the trial court to (1) allow both parties to state their positions on the issue, (2) consider their competing interests and (3) explore reasonable alternatives, if any, before declaring a mistrial. *Taylor* at ¶ 39. “A trial court must act ‘rationally, responsibly, and deliberately’ in determining whether to declare a mistrial.” *Id.*, quoting *State v. Gunnell*, 132 Ohio St.3d 442, 2012-Ohio-3236, 973 N.E.2d 243, ¶ 33.

**{¶ 65}** Following a thorough review of the record, we cannot say that the trial court abused its discretion in denying Williams’ motion for a mistrial based on Carr’s testimony. The record reflects that both before allowing Carr to testify and in considering Williams’ request for a mistrial, the trial court allowed the parties to state their positions on the issue and carefully considered the competing interests involved and what reasonable alternatives were available to remedy any potential

harm that might have resulted from Carr hearing Rox's testimony before she testified. After consideration, the trial court decided that a curative instruction was a reasonable alternative to declaring a mistrial. The trial court's decision to deny Williams' motion for a mistrial was based, not only on the trial court's recollection of Carr's testimony, but also a review of the trial transcript. As the trial court explained when denying Williams' renewed motion for a mistrial:

When I take into consideration the situation with the witness yesterday, I think you can look at it from both sides. You could completely find that her testimony on behalf of the State was unreliable based on the fact that she had a definitive identification of Jashon Williams on the day that the detective showed her the photograph and then came in here and wavered on that and then said the only reason she knows is because of what — well, she didn't say the only reason. If you read the transcript, it's in part because of what Carlin Rox said.

So that can go both ways whether or not they believed what she said on the day that she definitively told Detective Norman or not based on her testimony as it came out yesterday. It's denied.

The trial court's decision was rational, responsible and deliberate.

{¶ 66} Williams has not shown that he was materially prejudiced by Carr's testimony. On direct examination, Carr testified only as to her September 2, 2020 identification of Williams in a still image shown to her by police. Rox's trial testimony in July 2022 could have had no impact on whether Carr had previously identified Williams to police nearly two years earlier.

{¶ 67} On cross-examination, defense counsel inquired as to whether Carr still believed — as of the time of trial — that the male she had previously identified in the still image as Williams was, in fact, Williams. Defense counsel's cross-

examination of Carr exposed the limitations of, and potential deficiencies in, both her prior identification of Williams to police and her in-court identification of Williams at trial and made it very clear to the jury the extent to which Carr's in-court identification of Williams may have been impacted by Rox's testimony. The trial court specifically instructed the jury regarding Carr's testimony and advised the jury that it could consider Carr's presence in the courtroom during Rox's testimony when evaluating the credibility of her testimony:

In this case you also heard identifying witness testimony from the State of Ohio's witness, Miss Carr. You're to consider her pretrial identification and the testimony related to it in the same manner as you determine the credibility of any other witness.

Additionally, you may consider the fact that she was present in the courtroom during the testimony of Carlin Rox and give her testimony whatever weight you deem proper.

**{¶ 68}** We presume that the jury followed the trial court's instructions. *See, e.g., State v. Cepec*, 149 Ohio St.3d 438, 2016-Ohio-8076, 75 N.E.3d 1185, ¶ 89; *Garner*, 74 Ohio St.3d at 59, 656 N.E.2d 623; *see also State v. Solomon*, 8th Dist. Cuyahoga No. 109535, 2021-Ohio-940, ¶ 94 (observing that “[c]urative instructions have been recognized as an effective means of remedying errors or irregularities that occur during trial”), quoting *State v. Williams*, 8th Dist. Cuyahoga No. 94242, 2010-Ohio-5484, ¶ 21.

**{¶ 69}** Further, Carr was not the only witness who identified Williams at trial. Stavarz identified Williams in court as the man who stole the Ford Fiesta at gunpoint. Rox testified as to Williams' role in all three robberies.

{¶ 70} Williams has failed to demonstrate that Carr’s testimony improperly influenced the jury, affected the outcome of the case or deprived Williams of a fair trial. Considering the record before us, we find no basis upon which to conclude that the trial court’s decision to deny Williams’ motion for a mistrial and to, instead, give the jury a specific, curative instruction regarding Carr’s testimony, was arbitrary, unreasonable or unconscionable.

{¶ 71} Accordingly, we overrule Williams’ first assignment of error.

### **Ineffective Assistance of Counsel**

{¶ 72} In his second assignment of error, Williams argues that he was denied the effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution because his trial counsel failed to request a separation-of-witnesses order at the outset of the trial.

{¶ 73} A criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As a general matter, to establish ineffective assistance of counsel, a defendant must demonstrate: (1) deficient performance by counsel, i.e., that counsel’s performance fell below an objective standard of reasonable representation, and (2) that counsel’s errors prejudiced the defendant, i.e., a reasonable probability that but for counsel’s errors, the outcome of the proceeding would have been different. *Id.* at 687-688, 694; *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus. “Reasonable



probability” is “probability sufficient to undermine confidence in the outcome.” *Strickland* at 694.

{¶ 74} In Ohio, a properly licensed attorney is presumed to be competent. *State v. Black*, 2019-Ohio-4977, 149 N.E.3d 1132, ¶ 35 (8th Dist.), citing *State v. Smith*, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Because there are “countless ways to provide effective assistance in any given case,” on a claim of ineffective assistance of counsel, the court must give great deference to counsel’s performance and “indulge a strong presumption” that counsel’s performance “falls within the wide range of reasonable professional assistance.” *Strickland* at 689; *see also State v. Powell*, 2019-Ohio-4345, 134 N.E.3d 1270, ¶ 69 (8th Dist.) (“A reviewing court will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”), quoting *State v. Pawlak*, 8th Dist. Cuyahoga No. 99555, 2014-Ohio-2175, ¶ 69.

{¶ 75} Williams contends that he was denied the effective assistance of counsel because “there is no legitimate approach that involves allowing witnesses to have their testimony tainted by hearing the testimony of other witnesses.” He further contends that his defense was prejudiced by counsel’s failure to request a separation of witnesses because “the jury was presented with a witness whose recollection was not independent” and “if not for having heard the earlier testimony, [Carr] would not have recalled the salient facts.”

{¶ 76} “Although it is good practice to move for separation of witnesses,” this court has previously stated that counsel is not “deficient, per se, by failing to do so.”

*Berea v. McElroy*, 8th Dist. Cuyahoga No. 98642, 2013-Ohio-1188, ¶ 10; *see also State v. Farris*, 2d Dist. Clark No. 2003 CA 77, 2004-Ohio-5980, ¶ 60.

{¶ 77} However, even if defense counsel were deficient for failing to request a separation-of-witnesses order at the outset of the trial, Williams has not shown that he was prejudiced by counsel’s failure to request a separation of witnesses, i.e., that there is a reasonable probability that the outcome of the trial would have been different had counsel requested a separation-of-witnesses order.

{¶ 78} A court considering an ineffectiveness claim “must consider the totality of the evidence before the judge or jury.” *Bradley*, 42 Ohio St.3d at 142, 538 N.E.2d 373, quoting *Strickland*, 466 U.S. at 695, 104 S.Ct. 2052, 80 L.Ed.2d 674. As explained above, with respect to Carr’s testimony regarding her pretrial identification of Williams, Rox’s trial testimony could have had no impact on whether Carr had previously identified Williams, in the still image from the surveillance footage of the gas station robbery, to police in September 2020. With respect to Carr’s testimony regarding whether Carr still believed — as of the time of trial — that the male she had previously identified in that still image as Williams was, in fact, Williams, defense counsel’s cross-examination of Carr made it very clear to the jury the extent to which Carr’s trial testimony may have been impacted by Rox’s testimony, i.e., that in the absence of Rox’s trial testimony, she “probably wouldn’t have been sure.” In his cross-examination of Carr, defense counsel also gave the jury reason to question the reliability of Carr’s initial identification of Williams (and her trial testimony generally) based on her admitted intoxication

when she identified Williams to police in September 2020 and her admitted drug and alcohol use before her trial testimony.

{¶ 79} Further, Carr was only one of several witnesses who identified Williams. Stavarz identified Williams in court as the man who stole his Ford Fiesta at gunpoint. Rox testified as to Williams' involvement in all three robberies. Considering the totality of the evidence presented at trial, we cannot say that there is a reasonable probability that the outcome of the trial would have been different if defense counsel had requested a separation-of-witnesses order prior to Carr's testimony.

#### **Sufficiency and Manifest Weight of the Evidence**

{¶ 80} In his third assignment of error, Williams contends that the evidence was insufficient to support his convictions. In his fourth assignment of error, Williams contends that his convictions were against the manifest weight of the evidence. Although sufficiency and manifest weight challenges involve different standards of review, because, here, they are based on virtually the same arguments and evidence, we address them together.

{¶ 81} The relevant inquiry in a sufficiency challenge is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. The court examines all the evidence admitted at trial

to determine whether such evidence, if believed, would convince a reasonable juror of the defendant's guilt beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997) (Cook, J. concurring); *see also State v. Bankston*, 10th Dist. Franklin No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that “in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the state’s witnesses testified truthfully and determines if that testimony satisfies each element of the crime”).

**{¶ 82}** In contrast to a challenge based on sufficiency of the evidence, a manifest weight challenge attacks the credibility of the evidence presented. “[W]eight of the evidence involves the inclination of the greater amount of credible evidence.” *State v. Harris*, 8th Dist. Cuyahoga No. 109060, 2021-Ohio-856, ¶ 32, quoting *Thompkins* at 387. When considering an appellant’s claim that a conviction is against the manifest weight of the evidence, the appellate court functions as a “thirteenth juror” and may disagree “with the factfinder’s resolution of \* \* \* conflicting testimony.” *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). The appellate court examines the entire record, weighs the evidence and all reasonable inferences that may be drawn therefrom, considers the witnesses’ credibility and determines 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.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485

N.E.2d 717 (1st Dist.1983). Reversal on manifest weight grounds is reserved for the “exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387, quoting *Martin* at 175.

**{¶ 83}** Although Williams asserts that the state’s witnesses “failed to establish even the fundamental elements of the crimes charged,” the only element Williams specifically challenges is the element of identity. Williams does not dispute that the state presented sufficient competent, credible evidence to prove the other elements of aggravated robbery, grand theft, robbery and theft beyond a reasonable doubt. We, therefore, limit our analysis to (1) whether the evidence was sufficient to establish, beyond a reasonable doubt, that Williams was the person who committed the crimes at issue and (2) whether the jury’s determination that Williams was the person who committed these crimes was against the manifest weight of the evidence.

**{¶ 84}** Williams argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence because (1) there was no physical evidence, such as fingerprints or DNA, linking Williams to the crimes, (2) Rox’s testimony was “bias[ed],” “compromised,” “self-serving” and a product of his attempt “to minimize his potential prison time” by “assigning most of the blame to Mr. Williams,” (3) none of the video and photographic evidence was “conclusively shown to depict” Williams and (4) none of the victims was shown a photo lineup or had otherwise identified Williams until one of the victims “point[ed] to the non-lawyer sitting at the defense table” at trial. We disagree.

**{¶ 85}** There is no question that, to support a conviction, the evidence must establish beyond a reasonable doubt that defendant was the person who actually committed the crime. *State v. Brown*, 8th Dist. Cuyahoga No. 98881, 2013-Ohio-2690, ¶ 30; *State v. Collins*, 8th Dist. Cuyahoga No. 98350, 2013-Ohio-488, ¶ 19, citing *State v. Lawwill*, 12th Dist. Butler No. CA2007-01-014, 2008-Ohio-3592, ¶ 11.

**{¶ 86}** However, physical evidence linking a defendant to a crime is not necessary to support a conviction. *See, e.g., State v. Collins*, 8th Dist. Cuyahoga No. 107020, 2019-Ohio-1239, ¶ 21; *State v. Patterson*, 8th Dist. Cuyahoga No. 101415, 2015-Ohio-873, ¶ 44; *State v. Glover*, 1st Dist. Hamilton No. C-220088, 2023-Ohio-1153, ¶ 55 (“[T]he state is not required to present physical evidence to meet its burden of proof.”); *see also State v. Flores-Santiago*, 8th Dist. Cuyahoga No. 108458, 2020-Ohio-1274, ¶ 37 (“Physical evidence is not required to sustain a conviction against a manifest weight challenge.”); *State v. Robertson*, 8th Dist. Cuyahoga No. 106279, 2018-Ohio-2934, ¶ 32 (“[A] lack of physical evidence, standing alone, does not render a defendant’s conviction against the manifest weight of the evidence.”); *State v. Rusnak*, 7th Dist. Jefferson No. 15 JE 0002, 2016-Ohio-7820, ¶ 30 (fact that no physical evidence from the crime scene was presented at trial did not render verdict against the manifest weight of the evidence).

**{¶ 87}** A conviction may rest solely on the testimony of a single witness, if believed. *See, e.g., State v. Nicholson*, 8th Dist. Cuyahoga No. 110595, 2022-Ohio-2037, ¶ 180; *State v. Jones*, 108371, 2020-Ohio-3367, ¶ 71; *Flores-Santiago* at ¶ 38. And there is no requirement that a witness identify a perpetrator in a photo lineup

prior to identifying a defendant in court as the perpetrator. *Cf. State v. McLeod*, 12th Dist. Fayette No. CA2000-01-001, 2000 Ohio App. LEXIS 5651, 7-12 (Dec. 4, 2000) (victim’s failure to pick defendant’s photograph from a photo lineup did not require exclusion of her in-court identification of him; victim had an opportunity to observe defendant for a substantial period of time before and during the crime, providing an independent basis for her in-court identification).

{¶ 88} Here, Rox — who knew Williams — testified at length as to Williams’ involvement in each of the robberies at issue. Stavarz testified “[w]ithout hesitation” that Williams was the perpetrator who stole his Ford Fiesta at gunpoint based on his “direct” view of the perpetrator “twice” during the robbery. Although Petkovic and Clemence were unable to identify the person who robbed them, the state introduced surveillance footage and still images of the Remedi and Aldi robberies that show the perpetrator. Comparison of the clothing worn by the perpetrator during each of the robberies (as shown in the surveillance videos and still images) and the clothing worn by Williams in Instagram postings could have further reasonably supported the jury’s finding that Williams was the perpetrator of the three robberies.<sup>2</sup>

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<sup>2</sup> We reject Williams’ assertion that the jury could not reasonably rely on the surveillance video footage and still images introduced at trial because they were not shown to “conclusively” depict Williams. There is no requirement that video or photographic evidence must “conclusively” depict a defendant to support a conviction. This court has reviewed the relevant exhibits that are in the record. We acknowledge that the face of the perpetrator is not clearly visible in the videos and still images at issue. In some of the video footage, the view of the events and/or the perpetrator is further obscured due to distance or by trees or other objects. Some of the video footage and still images are dark, grainy or otherwise of poor quality. However, these videos and images were not introduced in isolation. As detailed above, the videos and images were identified by witnesses familiar with the events depicted within them and were used to supplement

**{¶ 89}** When viewed in the light most favorable to the state, the evidence presented at trial was sufficient for a rational jury to find, beyond a reasonable doubt, that Williams committed the three robberies and was sufficient to convict Williams of each of the crimes of which he was convicted.

**{¶ 90}** In support of his manifest weight challenge, Williams argues that Rox's testimony was not credible and should not have been believed due to his "naked bias," his plea agreement with the state, i.e., that Rox was only "out to save himself," and inconsistencies in his testimony. Williams contends that Stavarz's testimony identifying him as the armed perpetrator of the gas station robbery was likewise not credible due to Stavarz's brief interaction with the perpetrator (during which Stavarz's "focus" was on the gun), the fact that Stavarz had "never seen the person who robbed him before the event" and the fact that Stavarz "had not laid eyes on the person even a second time during the two years between the robbery and the trial."

**{¶ 91}** We acknowledge Rox's potential bias and his motive to minimize his involvement in the robberies based on his plea agreement and "open sentence." We likewise acknowledge the existence of certain conflicts and inconsistencies in, or arising out of, Rox's testimony. For example, although Rox claimed he did not know how to drive, Roda testified that surveillance footage from August 10, 2020 showed Rox in the Ford Fiesta "alone" driving into a Papa John's parking lot. Although Rox

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or corroborate witness testimony. It was for the jury to determine the ultimate probative value of that evidence.



claimed Williams was the person who took the purse from the victim during the Remedi robbery, at one point during his testimony, Rox states that the victim “got to fighting me. She wasn’t going. She was trying to get her stuff back.” Rox testified that the gun Williams used to rob Stavarz was a silver “Deuce Deuce” revolver (not a black .38 revolver as he allegedly told Roda) and that the Jeep Williams stole was brown (not grey, as its owner, Clemence, testified). Rox testified that Petkovic’s car was a cherry Volkswagen truck when, according to Petkovic, she drove a Lexus NX. There was also some confusion in Rox’s testimony as to when Cody was with Williams and Rox and who was driving the Ford Fiesta after the Jeep was stolen.

{¶ 92} However, a conviction is not against the manifest weight of the evidence “solely because the jury heard inconsistent or contradictory testimony.” *State v. Rudd*, 8th Dist. Cuyahoga No. 102754, 2016-Ohio-106, ¶ 72, citing *State v. Wade*, 8th Dist. Cuyahoga No. 90029, 2008-Ohio-4574, ¶ 38; *State v. Nitsche*, 2016-Ohio-3170, 66 N.E.3d 135, ¶ 45 (8th Dist.) (“A defendant is not entitled to reversal on manifest weight grounds merely because certain aspects of a witness’s testimony are not credible or were inconsistent or contradictory.”); *see also State v. Mann*, 10th Dist. Franklin No. 10AP-1131, 2011-Ohio-5286, ¶ 37 (“While the jury may take note of the inconsistencies and resolve or discount them accordingly, \* \* \* such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence.”), quoting *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 Ohio App. LEXIS 2245, 7 (May 28, 1996). Likewise, a defendant is not entitled to reversal on manifest weight grounds simply because a

witness may be “biased” or may have been motivated by self-interest in testifying. *See, e.g., Nicholson*, 2022-Ohio-2037, at ¶ 181; *State v. Abdul-Hagg*, 8th Dist. Cuyahoga No. 103974, 2016-Ohio-7888, ¶ 33-37; *State v. Holloway*, 8th Dist. Cuyahoga No. 101289, 2015-Ohio-1015, ¶ 18, 39-44.

{¶ 93} Rox’s testimony was not “unworthy of belief” simply because of his involvement in the robberies and his plea agreement with the state. *See, e.g., State v. Brightwell*, 10th Dist. Franklin No. 18AP-243, 2019-Ohio-1009, ¶ 39, 42-44, 50 (jury was not required to disbelieve witness’ testimony against defendant because testimony was procured pursuant to a plea agreement that permitted witness to plead guilty to a lesser charge and avoided a lengthy prison term); *State v. Fields*, 8th Dist. Cuyahoga No. 109664, 2021-Ohio-1880, ¶ 27-29 (defendant’s convictions were not against the manifest weight of the evidence; where jury was aware of accomplice’s role in the robbery and her plea deal, it could weigh witness’ credibility and determine whether or not they believed her testimony about defendant’s role in the robbery); *State v. Person*, 10th Dist. Franklin No. 16AP-12, 2017-Ohio-2738, ¶ 51-54 (fact that the testimony of three codefendants who took plea deals constituted the primary evidence against appellant did not render his convictions against the manifest weight of the evidence); *State v. Berry*, 10th Dist. Franklin No. 10AP-1187, 2011-Ohio-6452, ¶ 17-18 (rejecting defendant’s claim that his convictions were against the manifest weight of the evidence because accomplice was not a reliable witness and because state failed to present physical evidence linking him to the crime scene; jury was made aware of accomplice’s involvement in

murders, his willingness to testify against defendant, his receipt of a reduced sentence and his attempt to minimize his role in the murders; decision whether to believe accomplice's testimony was within the province of the jury).

{¶ 94} Rox explained, during his direct examination, why he chose to speak to police and testify against Williams. The jury was informed of the crimes with which Rox had been charged, of the reduced charges to which he had pled guilty pursuant to a plea agreement, that there had been no agreement, as part of his plea deal, regarding the sentence he would receive and that, as of the time of his trial testimony, Rox had not yet been sentenced. Defense counsel fully cross-examined Rox regarding his decision to enter a plea agreement and his motivation to testify against Williams. The trial court gave the jury appropriate cautionary instructions regarding Rox's role as an alleged accomplice, his potential motives in testifying and the impact on his credibility. Specifically, the trial court instructed the jury:

Testimony of an accomplice. You have heard testimony from Carlin Rox, another person who pleaded guilty to charges in this case and is said to be an accomplice. An accomplice is one who purposely knowingly assists or joins another in the commission of a crime. Whether Carlin Rox was an accomplice and the weight to give his testimony are matters for you to determine.

The testimony of an accomplice that is supported by other evidence does not become inadmissible because of his complicity, moral turpitude, or self interest; but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion and require that it be weighed with great caution.

It is for you as jurors, in light of all of the facts presented to you in front of the witness stand, to evaluate such testimony and to determine its quality and worth or lack of quality and worth.

An accomplice may have special motives in testifying. You should carefully examine an accomplice's testimony and use it with great caution and view it with grave suspicion.

*See also* R.C. 2923.03(D).

**{¶ 95}** The decision whether, and to what extent, to believe Rox was “within the peculiar competence of the [jury], who ha[d] seen and heard the witness.” *State v. Johnson*, 8th Dist. Cuyahoga No. 99822, 2014-Ohio-494, ¶ 54. The jury, having heard Rox's testimony and the other evidence presented at trial, was free to believe all, part or none of Rox's testimony. *See, e.g., Jones*, 2020-Ohio-3367, at ¶ 85; *see also State v. Royal*, 8th Dist. Cuyahoga No. 93903, 2010-Ohio-5235, ¶ 21-22 (deferring to jury's credibility determination of accomplice's testimony against defendant where jury was aware of accomplice's participation in robbery scheme and that she received a deal for cooperating with police).

**{¶ 96}** It was likewise within the province of the jury to weigh the other identification evidence offered by the state, including Stavarz's in-court identification of Williams, and to determine the reliability of that identification. *State v. Roper*, 9th Dist. Summit No. 20836, 2002-Ohio-7321, ¶ 55 (“The reliability of properly admitted eyewitness identification, like the credibility of the other parts of the prosecution's case is a matter for the jury.”), quoting *Foster v. California*, 394 U.S. 440, 443, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969).

**{¶ 97}** Williams has not shown that Rox's or Stavarz's testimony was so inherently incredible or unreliable as to preclude a reasonable fact finder from believing them. Although his interaction with his perpetrator was “quick,” Stavarz

testified that he saw the perpetrator’s face “directly” twice and he, “[w]ithout hesitation,” identified Williams in court as the man who had robbed him. At no point did Stavarz waver in his claim that Williams was the man who had stolen his car at gunpoint.

**{¶ 98}** Following a thorough review of the record, weighing the strength and credibility of the evidence presented at trial and the reasonable inferences to be drawn therefrom, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice such that Williams’ convictions must be reversed. This is not the “exceptional case” in which the evidence weighs heavily against Williams’ convictions. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. Accordingly, we overrule Williams’ third and fourth assignments of error.

### **Cumulative Error**

**{¶ 99}** In his fifth assignment of error, Williams asserts that the trial court and counsel made “numerous errors” in this case and that the “collective weight” of those “prejudicial errors” “casts doubt on the impartiality of the jury,” “undermines the necessary confidence in the outcome of the trial” and “warrant[s] reversal” of Williams’ convictions even if the “individual errors,” “by themselves,” do not.

**{¶ 100}** Under the cumulative error doctrine, a conviction will be reversed “when the cumulative effect of errors deprives a defendant of a fair trial even though each of the instances of trial-court error does not individually constitute cause for reversal.” *State v. Garrett*, Slip Opinion No. 2022-Ohio-4218, ¶ 270, citing *State v.*

*Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 223, and *State v. DeMarco*, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987), paragraph two of the syllabus.

{¶ 101} Williams does not identify the specific errors he contends supports his cumulative error challenge, referring only to the “numerous errors outlined above.” Likewise, he does not explain how these errors combined to deny Williams a fair trial, asserting only that “the collective weight of the numerous errors outlined above combined to create a trial that was, from start to finish, manifestly unfair.”

{¶ 102} An appellant’s brief must include “[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” App.R. 16(A)(7). An appellate court is not obliged to construct or develop arguments to support a defendant’s assignment of error and “will not ‘guess at undeveloped claims on appeal.’” *State v. Jacinto*, 2020-Ohio-3722, 155 N.E.3d 1056, ¶ 56 (8th Dist.), quoting *State v. Piatt*, 2020-Ohio-1177, 153 N.E.3d 573, ¶ 39 (9th Dist.), quoting *McPherson v. Goodyear Tire & Rubber Co.*, 9th Dist. Summit No. 21499, 2003-Ohio-7190, ¶ 31; see also *State v. Drain*, Slip Opinion 2022-Ohio-3697, ¶ 152 (rejecting claim that the cumulative effect of the alleged errors in the case rendered the proceeding unfair where appellant offered “no further analysis” of the issue), quoting *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, ¶ 103; *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, ¶ 197 (“[I]t is not enough simply to intone the phrase ‘cumulative error.’”).

**{¶ 103}** Even if we were to consider this assignment of error, we would find it to be meritless. Williams has not shown that multiple errors occurred below; therefore, the cumulative error doctrine does not apply. *See, e.g., State v. Worley*, 164 Ohio St.3d 589, 2021-Ohio-2207, 174 N.E.3d 754, ¶ 143 (“We have not identified a single error in [the defendant’s] trial, so the cumulative-error doctrine does not apply.”); *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 148 (cumulative error doctrine did not apply where appellant could not point to “multiple instances of harmless error”), quoting *Garner*, 74 Ohio St.3d at 64, 656 N.E.2d 623. Cumulative error cannot be established by “merely ‘combining \* \* \* unsuccessful claims together.’” *State v. Wagner*, 8th Dist. Cuyahoga No. 109678, 2023-Ohio-1215, ¶ 74, quoting *State v. Brown*, 10th Dist. Franklin Nos. 22AP-38, 22AP-39, 22AP-40, 22AP-41, and 22AP-42, 2022-Ohio-4073, ¶ 39.

**{¶ 104}** Accordingly, we overrule Williams’ fifth assignment of error.

### **Sentencing under the Reagan Tokes Law**

**{¶ 105}** In his sixth and final assignment of error, Williams contends that the trial court erred in sentencing him to an indefinite sentence under the Reagan Tokes Law. Under the Reagan Tokes Law, qualifying first- and second-degree felonies committed on or after March 22, 2019 are subject to the imposition of indefinite sentences. Williams argues that the Reagan Tokes Law is unconstitutional because it violates his constitutional rights to trial by a jury, the separation-of-powers doctrine and his right to due process.

{¶ 106} The arguments presented in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by this court's en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Accordingly, we overrule Williams' sixth assignment of error.

{¶ 107} Judgment affirmed.

It is ordered that appellee shall recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and  
EILEEN T. GALLAGHER, J., CONCUR

N.B. Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Administrative Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.

Judge Eileen T. Gallagher joined the dissent by Judge Lisa B. Forbes in *Delvallie* and would have found that R.C. 2967.271(C) and (D) of the Reagan Tokes Law are unconstitutional.