[Cite as *State v. Williams*, 2023-Ohio-3244.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 112053
v.	:	
THEOPLIC WILLIAMS III,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 14, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-669368-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Owen Knapp and Cedric Ware, Assistant Prosecuting Attorneys, *for appellee*.

FG+G LLC, and Marcus Sidoti; Joseph V. Pagano, *for appellant*.

FRANK DANIEL CELEBREZZE, III, P.J.:

{¶ 1} Appellant Theoplic Williams III ("appellant") challenges the judgment of the Cuyahoga County Court of Common Pleas convicting him of obstructing

official business. After a thorough review of the applicable law and facts, we affirm the judgment of the trial court.

I. Factual and Procedural History

{¶ 2} This case began as the result of a 911 phone call made by Sandra Miller ("Miller"). Miller was leaving a nail salon in the Eton shopping center in Woodmere when she observed a man, later identified as appellant, wearing a head covering and a colorful mask sitting on the curb in front of her vehicle. Miller observed a gun between appellant's legs that he picked up and "threw it back and forth" in his hands. She observed him stand up and put the gun in his pocket or in the back of his pants. Miller was concerned by this, so she drove to a nearby shopping plaza and called 911.

{¶ 3} As a result of Miller's call, Woodmere Police Department officers responded to the scene. Lt. Patterson arrived first and saw appellant sitting on the curb wearing a colorful mask. He approached him from behind, and as he got close, he observed the butt of a firearm near appellant's hand. Noting the civilians and cars in the area and concerned that appellant was going to harm himself or someone else, Lt. Patterson jumped on appellant, trying to get the firearm away from him. There was a struggle and both fell to the ground several times. Appellant got up and began running into a residential area. Lt. Patterson did not see the firearm on the ground and surmised that appellant must still have had it.

{¶ 4} Lt. Patterson called for backup, and Sgt. Colon of the Woodmere Police Department responded and began pursuing first in his patrol vehicle, then on foot.

He observed appellant running through a dry cleaner's parking lot and then through a CVS parking lot.

{¶ 5} Joel Klein ("Klein") was in the drive-thru of the CVS and observed appellant walking toward him. Appellant was walking with his head down and was wearing a hoodie. Klein thought this was odd because it was a rather warm day. Appellant's hands were in the front pocket of his hoodie. He then observed appellant turn and go through some bushes toward a private residence.

{¶ 6} Klein then observed an officer approaching with his weapon drawn. Figuring he was looking for appellant, Klein got out of his vehicle and pointed to the area through the bushes where appellant had gone.

{¶ 7} The Orange Village Police Department shares the same frequency main band as the Woodmere Police Department. Lt. O'Callahan of the Orange Village Police Department heard the original dispatch for the man with a gun at Eton shopping center. He was initially not very concerned, but later heard Lt. Patterson not responding when dispatch was trying to reach him and decided to head to the area.

{¶ 8} Through further radio communication, Lt. O'Callahan learned that Lt. Patterson had fought with appellant and was now chasing him on foot. Sgt. Colon stated over the radio that he was chasing appellant westbound on Chagrin Boulevard. Lt. O'Callahan activated his lights and sirens and began looking for appellant. He knew Sgt. Colon was chasing appellant, so he headed in that direction

to cut him off. He pulled to where appellant was about to come out on Brainard Road and exited his vehicle.

{¶ 9} Lt. O'Callahan located appellant and could see a weapon in his hand. Appellant ran behind a residence, and Lt. O'Callahan went around the front. Appellant then came back around the side, and the two encountered each other in the driveway of the residence.

{¶ 10} Lt. O'Callahan instructed appellant twice to drop his weapon. Appellant turned to face him and brought the gun up, pointing it at Lt. O'Callahan. Lt. O'Callahan fired his own weapon, shooting appellant five times. Appellant was taken to the hospital and treated for his wounds.

{¶ 11} It was later determined that the firearm had been reported stolen out of Euclid. It was registered to Vedez Gilcrease ("Gilcrease").

{¶ 12} Appellant was charged with assault on a peace officer in violation of R.C. 2903.13(A), a felony of the fourth degree; receiving stolen property in violation of R.C. 2913.51(A), a felony of the fourth degree; obstructing official business in violation of R.C. 2921.31(A), a felony of the fifth degree; resisting arrest in violation of R.C. 2921.33(A), a misdemeanor of the second degree; and aggravated menacing in violation of R.C. 2903.21(A), a misdemeanor of the first degree.

{¶ 13} The case was tried to a jury. The state presented the testimony of Miller; Gilcrease; Lt. Patterson; Sgt. Colon; Klein; Lt. O'Callahan; Bernard Melvin, a Woodmere Service Department worker who saw appellant going through the CVS parking lot and witnessed the confrontation between appellant and Lt. O'Callahan;

Det. April Alandt, who responded to the scene after appellant was shot; Ohio Bureau of Criminal Investigation ("BCI") Special Agent Justin Soroka, who processed the scene where appellant was shot; and Ohio BCI Special Agent Matthew Armstrong, who investigates officer-involved shootings for Ohio BCI.

{¶ 14} After the state rested, appellant moved for acquittal under Crim.R. 29. The court granted the motion with regard to the charges of assault on a peace officer and resisting arrest.

{¶ 15} Appellant rested without presenting any evidence and moved to renew his motion for acquittal. The court partially granted the motion, dismissing the furthermore clause of the obstructing official business charge with regard to the risk of physical harm to Sgt. Colon. The court declined to dismiss the clause as it related to the risk of physical harm to Lt. O'Callahan.

{¶ 16} The jury was instructed on the counts of receiving stolen property, obstructing official business, and aggravated menacing. The jury found appellant guilty of obstructing official business, and further found that appellant's actions did not create a risk of physical harm to Lt. O'Callahan, thus rendering the offense a misdemeanor of the second degree. Appellant was found not guilty of the remaining charges.

{¶ 17} Appellant was sentenced to pay the costs of the action; all fines were waived.

{¶ 18} Appellant then filed the instant appeal, raising three assignments of error for our review:

1. The trial court erred when it denied appellant's motion for acquittal under Crim.R. 29 because the state failed to present sufficient evidence to establish beyond a reasonable doubt the elements necessary to support the conviction.

2. Appellant's conviction is against the manifest weight of the evidence.

3. The court erred by instructing the jury that flight could be considered as evidence of consciousness of guilt over appellant's objection.

II. Law and Analysis

A. Sufficiency of the Evidence

{¶ 19} In his first assignment of error, appellant argues that the trial court erred in denying his motion for acquittal under Crim.R. 29 with regard to the obstructing official business charge.

{¶ 20} Appellant argues that his conviction was not supported by sufficient evidence because he was not given any commands before Lt. Patterson physically attacked him. He contends that once he broke free from Lt. Patterson's grasp, he did not harm the officer and simply left the parking lot. Appellant asserts that, given Lt. Patterson's "excessive and unreasonable" use of force against him, he was justified in not only resisting his arrest but in leaving the parking lot for his own safety.

{¶ 21} Appellant states that none of the officers ever stated that he was under arrest and no public official gave him any commands until Lt. O'Callahan confronted him in the driveway with his weapon drawn. He maintains that there was no

evidence that the police were engaged in any lawful act that appellant purposely obstructed or hindered.

{¶ 22} Where a party challenges the sufficiency of the evidence supporting a conviction, a determination of whether the state has met its burden of production at trial is conducted. *State v. Hunter*, 8th Dist. Cuyahoga No. 86048, 2006-Ohio-20, ¶ 41, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997). An appellate court reviewing sufficiency of the evidence must determine "'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. With a sufficiency inquiry, an appellate court does not review whether the state's evidence is to be believed but whether, if believed, the evidence admitted at trial supported the conviction. *State v. Starks*, 8th Dist. Cuyahoga No. 91682, 2009-Ohio-3375, ¶ 25, citing *Thompkins* at 387. A sufficiency of the evidence argument is not a factual determination, but a question of law. *Id.*

{¶ 23} R.C. 2921.31 provides:

> No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

{¶ 24} The statute further states that obstructing official business is a misdemeanor of the second degree unless the violation created a risk of serious

physical harm, which elevates the offense to a felony of the fifth degree. The jury specifically found that there was no risk of serious physical harm and thus appellant was only convicted of a second-degree misdemeanor.

{¶ 25} In *State v. Morris*, 2016-Ohio-8325, 68 N.E.3d 822 (8th Dist.), this court reiterated that a conviction for obstructing official business requires evidence of affirmative acts by the defendant, not merely statements or inaction, that hamper or impede a public official in the performance of his or her lawful duties. *Id.* at ¶ 20. Accordingly, the *Morris* Court found that the state's evidence of the defendant's failure to respond to police requests to exit the cruiser and his verbal outbursts to the officers was insufficient to support the defendant's conviction for obstructing official business. *Id.* at ¶ 18.

{¶ 26} Lt. Patterson testified as follows with regard to the events that occurred as he arrived on scene:

> [LT. PATTERSON:] Arrived on scene, I called out as I'm exiting the vehicle. They gave a description of the gentleman, wearing black top, black pants, and this covered face, colored face thing. And they said he was entering toward — she thought he was entering towards the mall. So again Officer — Sergeant Colon went that way, I went this way so we could come in at directionals.
>
> When I got out of the car — when I got to [the nail salon] and I'm getting out of the car, the gentleman was sitting right there. So I turned around and said I'm out at Fidelity, whatever. Started walking towards him, and we got into a scuffle. I saw the gun — well, I saw the gun first, the butt end of the gun. As he's reaching up like this, I saw the butt end, tried to get the gun away from the gentleman, and we just got in a scuffle.
>
> [PROSECUTOR:] Okay. When you say sitting right there, I know you're pointing, giving directions. It's no problem, right?

Approximately how far were you from him when you initially parked your cruiser?

[LT. PATTERSON:] Probably the distance from me and that chair right there.

[PROSECUTOR:] This chair right here?

[LT. PATTERSON:] Yes, sir. And as I started walking towards him, he looked back at me this way and started moving his right hand. And like I said, I saw the butt of the gun. Once I saw the butt of the gun, I was too close —

[PROSECUTOR:] How close were you? You said when you initially parked, from there to the chair. How close were you when you made your approach and first saw the butt of the gun?

[LT. PATTERSON:] About this distance from her. His back was to me and I was that close.

THE COURT: To the court reporter, you're referring to her?

[LT. PATTERSON:] Yes, ma'am.

[PROSECUTOR:] All right. So you saw the butt of the gun. What did you do, what did you say?

[LT. PATTERSON:] I didn't get to say much. When I got out of the car I saw people standing behind me. There were [nail salon] employees behind me, and as I walked around, like I said, I saw him and as I began to say — I saw the gun movement, and I was concerned for him. I didn't know what he was trying to do. I didn't — like I got nervous, I'm like, is he going to do something to himself, or is he going to start shooting at me? And I got these civilians behind me, so I tried to get his gun away from him. I didn't want him to get hurt, so I just kept trying to get his hand away from the gun.

[PROSECUTOR:] And were you successful in this?

[LT. PATTERSON:] We fought — or, well, we're fighting, I'm trying to keep his hands away from me, he's scratching at me. We fall on the ground two, three times, and we're just rolling around on the ground and he ends up getting away, pulls away from me, and starts backing

up and grabbing at his — where the gun is. And I'm still on the ground trying to get up. So —

[PROSECUTOR:] All right. You say that he's scratching at you. Where is he scratching at you at?

[LT. PATTERSON:] On my wrists. I tried to get his hands away from his gun, so I tried to put him in a full nelson. He's just scratching to get my hands off of me, and I'm trying to maintain, keeping his hands away from him. I'm screaming at him, you know, Drop the gun. Get your hands away from the gun. Drop the gun, drop the gun.

He said, I got a permit.

I said, We can figure that out. Stop, drop — just let go of the gun.

* * *

[PROSECUTOR:] And you said when he stood up, he's reaching where the gun — how do you know where that gun is?

[LT. PATTERSON:] Because that's the last place he was — his hands were. So that's why I figured that's where it has to be, because when I saw the butt of it, that's where it was, at that level. So as he's backing up, doing this (Indicating) I'm trying to get off the ground, because I don't know what he's going to do.

[PROSECUTOR:] You described what he was wearing. I need you to be more specific, okay? I know it's a year ago. Is this area in his pants, is it a hoodie? Where is where, like what he is —

[LT. PATTERSON:] He's wearing a hoodie, and I think it was right in his hoodie thing right here. Like I said, he's reaching for it as he's backing up away from me, and yelling at me.

[PROSECUTOR:] Okay. Why jump on him in that frame point of time?

[LT. PATTERSON:] Again, I was concerned that I didn't know where his state of mind was, and I didn't know what he was going to do. And I was too close, and I didn't want to, you know, have a gunfire right here and know that these people are right behind me. I was concerned that he's either going to hurt himself or he's going to hurt — start shooting at me or start shooting wildly.

> [PROSECUTOR:] Okay. You mentioned there were people behind you. What's the foot traffic like at Eton shopping center, is it a busy place, not so busy place, kind of busy place?
>
> [LT. PATTERSON:] It's a busy place, it's a destination place. We have places like Tiffany's and some good restaurants there and Barnes & Noble. People come there a lot for the shopping there.

{¶ 27} A surveillance video was played for the jury that depicted some of the interaction between appellant and Lt. Patterson. Lt. Patterson testified that he wanted to get appellant's hand away from the gun and was telling him to drop the gun. He was concerned that appellant was going to hurt himself or someone else with the gun, particularly given the civilians and cars in the area. He testified that his priority was "preservation of life."

{¶ 28} Lt. Patterson stated that he did not have time to identify himself to appellant but that he was in his full police uniform. When asked if appellant said anything to him as he approached, Lt. Patterson testified:

> He never said anything to me, but when I approached, he turned to me like this, saw that I was coming at him, and like I said, he started moving his hand up. And I was too close and I saw the butt of the gun. That's when I wanted to get his hands away from the gun instead of drawing my weapon. I wasn't trying to get him hurt. I just wanted to get [his] hand away from the gun — away from the hand.

{¶ 29} On cross-examination, trial counsel for appellant asked what crime appellant had committed at the time that Lt. Patterson came up behind him and made physical contact with him. Lt. Patterson stated that it was possession of a firearm on private property.

{¶ 30} In the instant matter, appellant did not simply fail to comply with Lt. Patterson's commands to drop the gun. He engaged in a struggle with Lt. Patterson and ultimately fled the scene.

{¶ 31} Ohio courts have found that sufficient evidence existed to support a conviction for obstructing official business when the defendant struggled with or ran from the police, which established the element of an affirmative act done with an intent to impede law enforcement. *See State v. Brauchler,* 5th Dist. Holmes No. 19CA010, 2020-Ohio-2731 (appellant convicted of obstructing official business after struggling with officers in back of cruiser); *State v. Gannon,* 9th Dist. Medina No. 19CA0053-M, 2020-Ohio-3075 (conviction for obstructing official business upheld where appellant refused to comply with officer's commands and physically resisted officer's attempt to remove him from his vehicle); *State v. Vargas*, 8th Dist. Cuyahoga No. 97377, 2012-Ohio-2768 (defendant involved in a car accident ran away from the investigating officers and then descended down a steep ravine and jumped into a river to evade them, requiring the officers to first chase him and then rescue him); *State v. Wilson*, 8th Dist. Cuyahoga No. 96627, 2011-Ohio-6886 (suspect fled after the police officers arrived to investigate a report of a man with a gun, a chase ensued, and the police apprehended the suspect only after he fell into a creek); and *State v. Williams*, 8th Dist. Cuyahoga No. 89574, 2004-Ohio-4476 (defendant ignored a police order to stop and the police chased him for several minutes before apprehending him).

{¶ 32} The state presented sufficient evidence that, if believed, would convince the average mind of appellant's guilt beyond a reasonable doubt. Appellant's struggle with Lt. Patterson, and his fleeing from the scene on foot obstructed the officer's investigation of a 911 call about an individual with a gun in the mall parking lot. The trial court therefore did not err in denying appellant's Crim.R. 29 motion with regard to the obstruction charge, and appellant's first assignment of error is overruled.

B. Manifest Weight of the Evidence

{¶ 33} In his second assignment of error, appellant argues that the verdict was against the manifest weight of the evidence because the quality of the evidence against him was poor and unreliable. He contends that the trier of fact clearly lost his way.

{¶ 34} When reviewing a manifest weight challenge, an appellate court, "'weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Virostek*, 8th Dist. Cuyahoga No. 110592, 2022-Ohio-1397, ¶ 54, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A reversal on the basis that a verdict is against the manifest weight of the evidence is granted "'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin* at 175.

{¶ 35} As this court has previously stated:

> The criminal manifest weight of-the-evidence standard addresses the evidence's effect of inducing belief. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing *Thompkins*, 78 Ohio St.3d at 386, 678 N.E.2d 541 (1997). Under the manifest weight-of-the-evidence standard, a reviewing court must ask the following question: whose evidence is more persuasive — the state's or the defendant's? *Wilson* at *id*. Although there may be legally sufficient evidence to support a judgment, it may nevertheless be against the manifest weight of the evidence. *Thompkins* at 387; *State v. Johnson*, 88 Ohio St.3d 95, 2000-Ohio-276, 723 N.E.2d 1054 (2000).
>
> When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the manifest weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the fact finder's resolution of the conflicting testimony. *Wilson* at *id*., quoting *Thompkins* at *id*.

State v. Williams, 8th Dist. Cuyahoga No. 108275, 2020-Ohio-269, ¶ 86-87.

{¶ 36} In its role as the "thirteenth juror," an appellate court must review the entire record, weigh the direct and circumstantial evidence and all reasonable inferences drawn therefrom, and consider the credibility of the witnesses to determine "'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *Thompkins* at 387, quoting *Martin*.

{¶ 37} Appellant argues that, rather than supporting conviction, the manifest weight of the evidence establishes that appellant's decision to "wiggle" out of Lt. Patterson's hold and leave the scene was well within his rights. He maintains that because appellant had not engaged in criminal activity, it was not unlawful for him to leave the scene despite police questioning.

{¶ 38} A police officer may make a brief, warrantless, investigatory stop of an individual where the officer reasonably suspects that the individual is or has been involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In assessing that conclusion, the officer must be able to point to specific and articulable facts that, taken together with rational inference from those facts, reasonably warrant the intrusion. *State v. Andrews*, 57 Ohio St.3d 86, 565 N.E.2d 1271 (1991), citing *Terry*.

{¶ 39} The United States Supreme Court has held that the Fourth Amendment's ban on unreasonable seizures sets forth the right of an ordinary citizen to be free from the use of excessive force during an arrest or investigatory stop. *See Graham v. Connor*, 490 U.S. 386, 394, 109 S.Ct. 1865, 104 L.Ed.2d 443, (1989). However, "'a police officer is justified at common law to use *reasonable* force in the course and scope of his law enforcement duties.'" (Emphasis added.) *Cleveland v. Sowders*, 8th Dist. Cuyahoga No. 105946, 2018-Ohio-1632, ¶ 4, quoting *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, 29 N.E.3d 939, ¶ 17.

{¶ 40} In determining whether an officer's use of force was "reasonable," courts must perform a "careful balancing of the 'nature and intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Id.*, quoting *Tennessee v. Garner*, 471 U.S. 1, 8, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). While the Supreme Court's decisions in *Garner* and *Graham* involved an officer's civil liability for deprivation of civil rights under color of law, the Supreme Court of Ohio has noted that these cases help to define the

circumstances in which the Fourth Amendment permits a police officer to use force and are applicable to criminal convictions. *White* at ¶ 24-25.

{¶ 41} The inquiry as to "reasonableness" is an objective one and requires us to consider "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham* at 397. In making this assessment, it must be looked at "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. The *Graham* Court cautioned that properly applying this reasonableness standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.*

{¶ 42} Lt. Patterson's use of force was reasonable under the circumstances. Lt. Patterson was responding to a report of a man wearing a mask, holding a gun, and walking toward the mall. It is evident from the surveillance video that the parking lot was crowded and there were multiple civilians walking around. Lt. Patterson testified that he was concerned that appellant was going to hurt himself or someone else with the gun and that he just wanted to get the gun away from appellant. When viewed through the lens of the all-too-frequent instances of gun violence in public places, it is not difficult to imagine that a report of a man wearing a mask with a gun in a mall parking lot, along with Lt. Patterson's observation of

appellant's hand moving near the gun, could cause the officer to take immediate steps, including the use of force, to ensure the safety of himself and the civilians in the area.

{¶ 43} Consequently, Lt. Patterson had an objectively reasonable perception of danger that entitled him to use force to attempt to get the gun away from appellant. Accordingly, Lt. Patterson's actions were constitutionally permissible, and appellant was not justified in refusing to obey Lt. Patterson's commands, struggling with him, and fleeing the scene.

{¶ 44} The state presented reliable evidence to demonstrate that appellant acted with an intent to impede the officers' investigation and did, in fact, hamper or impede their performance.

{¶ 45} After reviewing the entire record, weighing the evidence and all reasonable inferences, considering the credibility of witnesses, and resolving conflicts in the evidence, it is apparent that the jury did not lose its way and create such a manifest miscarriage of justice that appellant's conviction must be reversed and a new trial ordered. Appellant's conviction for obstructing official business was not against the manifest weight of the evidence, and appellant's second assignment of error is overruled.

C. Jury Instruction – Flight

{¶ 46} In his third assignment of error, appellant contends that the trial court erred by instructing the jury that flight could be considered evidence of consciousness of guilt. He argues that "the record at best established that

[appellant] merely departed from the parking lot, following a 'consensual encounter' initiated by the police, where no crime had even occurred." He asserts that there was no testimony that appellant had committed any offense at the time he left, that he "fled" the parking lot, or that he was even going to be arrested.

{¶ 47} The state contends that the court heard the testimony of the officers and witnesses that observed appellant's conduct. Klein testified that appellant was walking as though he was trying to be inconspicuous and appeared to be trying to escape. In addition, Sgt. Colon's cruiser's lights and sirens were activated when he was initially pursuing appellant. The state concludes that appellant was taking active measures to avoid being found and apprehended.

{¶ 48} The trial court has discretion in fashioning jury instructions. *State v. Howard*, 8th Dist. Cuyahoga No. 100094, 2014-Ohio-2176, ¶ 35, citing *State v. Martens*, 90 Ohio App.3d 338, 629 N.E.2d 462 (3d Dist.1993). We review the court's charge for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is "unreasonable, arbitrary, or unconscionable." *Bowman v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 102492, 2015-Ohio-2866, ¶ 9, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "A flight instruction on consciousness of guilt based on the flight of the accused is appropriate if there is sufficient evidence presented at trial that the defendant attempted to avoid apprehension." *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 49.

{¶ 49} In this case, appellant does not contest the content of the jury instruction, but questions the propriety of giving the instruction. He argues that the evidence did not warrant an instruction on flight. "[T]o warrant a flight instruction, it must be clear the defendant took affirmative steps to avoid detection and apprehension beyond simply leaving the scene of the crime." *State v. Holland*, 8th Dist. Cuyahoga No. 109416, 2021-Ohio-705, ¶ 25. "Flight in this context requires the defendant to appreciate that he [or she] has been identified as a person of interest in a criminal offense and is taking active measures to avoid being found." *Id.*, citing *State v. Ramos*, 8th Dist. Cuyahoga No. 103596, 2016-Ohio-7685, ¶ 28.

{¶ 50} The evidence presented at trial indicated that appellant left the scene by running through multiple parking lots, down a hill, through a drive-thru, and through the bushes into the yard of a residential home. Further, Sgt. Colon testified that his lights and sirens were activated while he pursued appellant. There was sufficient evidence presented that appellant attempted to avoid apprehension. Therefore, the flight instruction was properly given, and appellant's third assignment of error is overruled.

III. Conclusion

{¶ 51} Appellant's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Further, because sufficient evidence was presented at trial to warrant the flight instruction, the trial court did not abuse its discretion in instructing the jury on flight. All of appellant's assignments of error are overruled, and the judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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FRANK DANIEL CELEBREZZE, III, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., CONCURS IN JUDGMENT ONLY;
EMANUELLA D. GROVES, J., CONCURS IN JUDGMENT ONLY