

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 115903
v.	:	
	:	
MARSHAUN HAMILTON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 1, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-703805-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, John Kirkland and Connor J. Davin, Assistant
Prosecuting Attorneys, *for appellee*.

Edward M. Heindel, *for appellant*.

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant Marshaun Hamilton (“Hamilton”) appeals his multiple convictions and sentence for aggravated robbery, theft, failure to comply, receiving stolen property, felonious assault, discharge of firearm on or near prohibited premises, attempted felonious assault, improper discharge into

habitation, robbery, grand theft of a motor vehicle and a firearm, attempted murder, and improperly handling firearms in a motor vehicle — all arising from a crime-spree occurring within two months. He raises the following assignments of error for review:

Assignment of Error I: The trial court committed plain error by failing to sever several of the charges for separate trials, even though the incidents were unrelated, the evidence did not overlap, and the risk of spillover prejudice was substantial.

Assignment of Error II: The trial court imposed an unconstitutional trial tax when it sentenced Hamilton to more than twenty times the sentence imposed on a testifying codefendant.

Assignment of Error III: [Hamilton] was denied the effective assistance of counsel because trial counsel failed to move to sever the charges for separate trials.

Assignment of Error IV: The convictions were not supported by sufficient evidence because Hamilton was never reliably identified as the perpetrator.

Assignment of Error V: The convictions were against the manifest weight of the evidence.

{¶ 2} For the reasons set forth below, we affirm Hamilton’s convictions and sentence.

I. Facts and Procedural History

{¶ 3} In July 2025, Hamilton was charged in a 31-count indictment resulting from a series of offenses occurring in multiple cities in Cuyahoga County, Ohio between March 18 and May 17, 2024. We address the charges by the incident date.

March 18, 2024 — East Cleveland and Lyndhurst — Counts 1-8 and Stolen Nissan Rogue — Count 9

{¶ 4} Count 1 charged Hamilton with aggravated robbery. Count 2 charged him with theft and included a furthermore clause that the property or services stolen was valued at \$1,000 or more and less than \$7,500. Counts 3 and 4 charged him with the failure to comply with an order or signal of a police officer, with Count 4 including a furthermore clause that he fled immediately after the commission of a felony. Counts 5 and 8 charged him with receiving stolen property (a Buick). Count 6 charged him with felonious assault. Count 7 charged him with the discharge of firearm on or near prohibited premises. Count 9 charged Hamilton with receiving stolen property (a Nissan Rogue). Each of Counts 1-6 and Count 8 carried a one-year firearm specification. Counts 1, 2, and 6 also included a three-year firearm specification.

April 9, 2024 — Cleveland — Counts 10-18

{¶ 5} Counts 10, 12, and 14 charged Hamilton with attempted felonious assault. Counts 11, 13, and 15 charged him with felonious assault. Counts 16-18 charged him with improperly discharging a firearm at or into a habitation. Each of Counts 10-18 carried both a one- and three-year firearm specification.

April 13, 2024 — Cleveland — Counts 19-24 and Stolen Nissan Maxima — Count 31

{¶ 6} Count 19 charged him with aggravated robbery. Counts 20 and 21 charged him with robbery. Count 22 charged him with grand theft of a motor vehicle (a Nissan Murano) and carried a furthermore clause that the property is a stolen

vehicle. Count 23 charged him with grand theft of a semiautomatic handgun and carried a furthermore clause that the property is a stolen firearm or dangerous ordnance. Counts 24 and 31 charged Hamilton with receiving stolen property (a semiautomatic handgun and a Nissan Maxima, respectively). Each of Counts 19-23 carried both a one- and three-year firearm specification.

April 15, 2024 — Maple Heights — Counts 25-30

{¶ 7} Count 25 charged him with attempted murder. Counts 26 and 27 charged him with aggravated robbery. Counts 28 and 29 charged him with felonious assault. Count 30 charged him with improperly handling firearms in a motor vehicle. Each of Counts 25-29 carried both a one- and three-year firearm specification. Count 24 carried a one-year firearm specification.

{¶ 8} The matter proceeded to a jury trial on all 31 counts, where the following evidence was adduced as to each incident.

March 18, 2024 — East Cleveland

{¶ 9} On March 18, 2024, East Cleveland Police Officers responded to a “shots fired alert” in the area of Noble Road and Euclid Avenue at approximately 4:04 p.m. (Tr. 578.) Officer Alijandro Torres (“Officer Torres”) testified that he responded to the scene, where he and another officer collected several 9 mm shell casings. Officer Torres went inside a nearby gas station and was able to view video of the incident, which was played for the jury. *See* State’s exhibit No. 52. In the video, two males wearing ski masks, who were occupants of a dark colored Buick with a taped rear window, can be observed shooting at a vehicle fleeing northbound

on Noble Road.¹ According to Officer Torres, the police were not able to identify the men in the ski masks at the gas station or the individuals in the other vehicle.

{¶ 10} D.L., Hamilton’s alleged co-conspirator, testified he entered into a plea agreement with the State of Ohio (“State”), and as part of that agreement, he agreed to testify against Hamilton. At the time of trial, D.L. was in the custody of the Ohio Department of Youth Services.² D.L. testified that he has known Hamilton for over ten years and considered him as his best friend. Hamilton’s nickname was “Spook.” (Tr. 930.)

{¶ 11} According to D.L., he and Hamilton were at the gas station and “ran into some people that we weren’t really cool with.” (Tr. 944.) D.L. explained that the other people were about to pull out of the gas station when he shot at them first and then Hamilton started shooting. The others then shot back at them, and D.L. and Hamilton pulled out of the gas station with Hamilton driving. D.L. stated that they were chasing “like five people” in a Kia through Cleveland until they reached an area near St. Clair Avenue. (Tr. 947.) At that point, the others jumped out of the car and they started shooting at each other.

{¶ 12} D.L. identified himself and Hamilton on a video taken from Hamilton’s phone during the incident, which was played for the jury. *See* State’s exhibit No. 300. D.L. testified that gunshots could be heard in the video and

¹ The parties stipulated that Joseph Greene is the owner of the stolen Buick.

² Pursuant to Loc.R. 13.2(B)(1)(c), initials are used throughout to protect the privacy of the minor and the minor’s family members to the extent any reference to the family members is likely to reveal the identity of the minor.

Hamilton could be heard referencing that the others had guns. D.L. further testified that Hamilton could be observed wearing a black ski mask, ripped jeans, a G-star hoodie and was driving the Buick during this incident.

{¶ 13} While Hamilton did not testify at trial, he admitted to being in the Buick with D.L. on March 18, 2024, in his statement to a detective from the Lyndhurst Police Department. Hamilton’s cell phone records also placed him on Noble Road during the time of the shooting.

{¶ 14} Cleveland Police Officer James English (“Officer English”) testified that on March 25, 2024, a resident at an apartment complex in the Fifth District of Cleveland reported suspicious activity involving a Buick. The caller observed two males exiting the car and wiping it down. Officer English testified that the rear passenger’s side window was “broken out and mended together with a plastic bag . . . and tape.” (Tr. 507.) He further testified that there was a bullet hole in the Buick. Ultimately, the car was then towed and processed by Cleveland police in connection with “other shootings.” (Tr. 508.) According to Officer English, “because we saw the bullet in there . . . we assumed that it was involved in a shooting.” (Tr. 508-509.)

March 18, 2024 — Lyndhurst and Stolen Nissan Rogue

{¶ 15} Testimony established that a few hours later Hamilton was involved in another incident on March 18, 2024, in Lyndhurst. According to Q.M., he was robbed while walking home from Brush High School. Q.M. identified the Buick as the vehicle used by the assailants during the robbery. The incident was captured on surveillance video from a nearby middle school, which was played for the jury. *See*

State's exhibit No. 2. In the video, the Buick can be observed pulling up beside Q.M. with the assailant exiting the vehicle and approaching Q.M. The assailant robbed Q.M. at gunpoint taking his Canada Goose coat, headphones, and cell phone. Q.M. testified that the assailant was a male but could not identify him because he was wearing a mask. He further described the assailant as being dressed all in black. From the video, it could be observed that Q.M. is taller than the assailant and the assailant had "a little white emblem" on his back right shoulder. (Tr. 714.)

{¶ 16} Lyndhurst Police Officer Dominique Whitney ("Officer Whitney") responded to the scene and testified that Q.M. reported being robbed at gunpoint by a man in a Buick sedan with a "busted . . . passenger rear window." (Tr. 605-606.) Q.M. stated his jacket, headphones, and cell phone had been stolen during the robbery. Officer Whitney testified that Q.M. located his cell phone later that evening near his home.

{¶ 17} Lyndhurst Police Officers Jonathon Romanin ("Officer Romanin") and Mark Dingenary ("Officer Dingenary") also responded to the call. Officer Romanin testified that based on the description provided — a brown sedan — he searched the department's license plate reader system and located a Buick matching that description. This Buick also matched the description and license plate of the Buick involved in the East Cleveland shooting earlier in the day. Upon locating the Buick, both Officers Romanin and Dingenary testified that they initiated the lights on their respective patrol vehicles to begin a stop. According to the officers, the Buick did not comply. The officers continued the pursuit of the Buick through the

cities of Lyndhurst, South Euclid, and Cleveland. Dash-cam videos of the pursuit from both Officer Romanin's and Officer Dingenary's patrol vehicles were played for the jury. *See* State's exhibit Nos. 5 and 6. Officer Romanin was in the lead, and Officer Dingenary followed behind him. In the videos, the Buick can be observed running through several stop signs at speeds of up to 60 m.p.h. in a 25 m.p.h.-residential area and through a red light at 75 m.p.h. At that point, the officers lost sight of the Buick and terminated the pursuit.

{¶ 18} Lyndhurst Police Detective Scott Gorski ("Det. Gorski") testified regarding his investigation into this incident. Det. Gorski communicated with a Cleveland Police Detective, who had similar cases, and provided Det. Gorski with possible suspects in their cases. Eventually, Lyndhurst Police arrested Hamilton in May 2024. Det. Gorski's interview of Hamilton was played for the jury. *See* State's exhibit No. 214. Hamilton told detectives about a stolen vehicle that was found at his residence at the time of his arrest. He mentioned that he knew that it was probably stolen. As to the Lyndhurst incident, Hamilton initially stated to the detectives that he was not there. He claimed that he had only heard about the robbery and that someone had told him he resembled the suspect. As they discussed the incident further, Hamilton admitted that he was in the Buick along with D.L. and his friend "Trap," who was later determined to be Lamar Barlow ("Barlow"). Hamilton stated that he was in the backseat and that Barlow was the one who exited the Buick. He also stated to the detectives that he was the driver and D.L. exited the vehicle and robbed Q.M.

{¶ 19} D.L. testified to this incident as well. According to D.L., he was the driver of the Buick, Hamilton was in the front passenger seat, and Barlow was in the backseat. As they were driving around, they observed someone walking on the side of the road wearing a designer jacket. Hamilton then “basically like called dibs on getting out and robbing that person.” (Tr. 940.) Hamilton had a gun at that time and took Q.M.’s phone, Canada Goose jacket, and headphones.

{¶ 20} Additional testimony was presented of Hamilton’s cell phone records, which corroborated his presence in the Lyndhurst area at the time of the robbery.

{¶ 21} As to the Nissan Rogue, Anthony Smith (“Smith”) testified that on March 21, 2024, he had just parked his car, a 2022 Nissan Rogue, near his residence on the westside of Cleveland. Before he exited his car, a sedan pulled up alongside him blocking him. A male got out of the sedan, approached Smith, and pointed a gun in his face. A few more men came around the opposite side of Smith’s vehicle. One of them opened the front passenger door and sat inside. Two of the men entered the backseat and searched through the vehicle. According to Smith, “the gentleman with the gun told me to take off my seat belt and get out the car.” (Tr. 911.) The assailants then went through his pockets, checked his wallet, and found his keys. Smith testified that the gunman took his phone, ordered him to enter the password, and began scrolling through his apps. Smith then stated, “About three seconds later, there was one person in the get-away car that blocked me in, and then both cars were gone.” (Tr. 911.) Smith briefly ran after them before heading into his apartment building, where he called the police.

{¶ 22} Cleveland Police Detective Michael Hale (“Det. Hale”) testified that he processed a 2022 Nissan Rogue, which was associated with an aggravated robbery in Cleveland. This vehicle had damage to the front of the vehicle and the entire passenger side. *See* State’s exhibit Nos. 62, 65, and 68. Hale located a handgun holster, an “empty clear polymer .9 millimeter magazine and a black metal .380 auto magazine,” and a red and black glove in the vehicle. (Tr. 794.) Furthermore, D.L. identified Hamilton as the driver of the Nissan Rogue from video at a gas station located at East 110th Street and St. Clair Ave. *See* State’s exhibit No. 300.

April 9, 2024 — Cleveland

{¶ 23} The April 9, 2024 incident involved three separate victims: A.M., her daughter J.M., and her aunt, A.H. This incident occurred around 6:50 p.m. A.M. testified that she was at A.H.’s house on East 117th Street in Cleveland with J.M. to pick up her mail. A.M. waited outside on the porch while J.M. went inside to retrieve the mail. As J.M. came back outside and handed A.M. the mail, she “heard all these gunshots” so A.M. “just grabbed [J.M.] and kind of pushed her through the door.” (Tr. 557, 558.) After the gunshots stopped, A.M. went through the house and stated that the “house was smokey . . . from the bullets coming through.” (Tr. 558.)

{¶ 24} A.H. testified that at the time of the incident, she was in the basement and heading upstairs when she heard a rapid series of “boom, boom, boom” sounds. (Tr. 565.) A.M. and J.M. ran into the house, stating, “Somebody’s shooting. Somebody’s shooting[.]” (Tr. 566.) A.H. described the damage to her house from

the gunshots. According to A.H., a bullet entered on the front, right side of her home, hitting “a candle that was in front of the window. It splattered all over the room on that side. Then on the other side, the left side, the bullet went through the window into the wall. So it was like drywall on the floor.” (Tr. at 569.) A.H. further testified that her friend and her friend’s grandson were in the basement with her, and her father was in his bedroom at that time.

{¶ 25} Neither A.H. nor A.M. testified that they were struck by a bullet, or that a bullet struck near them. Neither offered any testimony identifying the shooter or suggesting why anyone would have intended to cause them harm.

{¶ 26} Cleveland Police Officer Patrick Wells (“Officer Wells”) testified that on April 9, 2024, he and his partner responded to a call for “shots fired . . . in the four or five hundred block of East 117” in Cleveland. (Tr. 653.) On scene, Officer Wells observed multiple bullet defects in the walls consistent with bullets entering the residence.

{¶ 27} Cleveland Police Detective Daniel McCandless (“Det. McCandless”) testified that he also responded to the scene. He canvassed the area for spent shell casings. He walked through a vacant field across from A.H.’s home and collected ten 9 mm casings. Additionally, he obtained a copy of security camera footage, which was played for the jury, “from a house located on East 118th that showed several males [in masks] walking up a driveway.” (Tr. 665.) The group of males can be observed running away. *See* State’s exhibit Nos. 199A and 300. D.L. identified

Hamilton as one of the males in the video with a gun in his hand as they ran away.
Id.

{¶ 28} Det. McCandless further testified that he was able to view a video from Hamilton’s phone taken approximately 30 minutes after the shooting, which depicted Hamilton in a car wearing specific clothing that matched one of the individuals brandishing a gun in the driveway of the house on East 118th at the time of the shooting.

{¶ 29} D.L. also testified to this incident. He identified himself, Hamilton, Barlow, and “Bewhop” as the males walking up the driveway. He described Hamilton as the one wearing the black Carhart hoodie and a black Nike ski mask and holding a gun. According to D.L., he was “chilling” in a Jeep with Bewhop and Barlow when Hamilton called him and said “some people outside over on 117th started shooting at him.” (Tr. 954.) Hamilton then met up with them in a “Nissan” and they drove through 117th to “see . . . what was going on[.]” (Tr. 954, 956.) They parked on East 118th and walked through a house they thought was abandoned. D.L. next testified that gunshots started “going off” and he ran away. (Tr. 957.) D.L. also identified video from Hamilton’s phone, which depicts Hamilton in the Jeep with a handgun, bragging about the shooting and wearing the same Nike ski mask as in the video from the house on East 118th. *See* State’s exhibit No. 300.

{¶ 30} Furthermore, testimony from a Bureau of Criminal Investigation firearms identification analyst matched some of the shell casings found at this

incident to those found at the East Cleveland shooting. Hamilton's cell phone records also indicated that Hamilton's phone was at the location of this shooting.

April 13, 2024 — Cleveland and Stolen Nissan Maxima

{¶ 31} On the evening of April 13, 2024, Amir Rasheed ("Rasheed") and his aunt Vera Grimes ("Grimes") were robbed as they walked to their cars following their shift at his uncle's restaurant, Muncieez, located at East 123rd Street in Cleveland. Rasheed testified that he noticed a silver Nissan pulled up near him and Grimes. The occupants of the Nissan were wearing masks so he started to run, but then stopped because he did not want to leave Grimes behind. Rasheed described what happened next as "one of the dudes [running] up on me and put[ting] the gun on me and sa[ying], 'Give me the keys.' So I just gave him the car keys, and I took my auntie back to the restaurant, and I seen they pulled off." (Tr. 898.) Rasheed testified that the assailants took a Nissan Murano, which belonged to his mother, who kept her gun, "a .380," in the glove box. (Tr. 905.) Although the assailants were masked, Rasheed testified that they were African American and around his age — 18.

{¶ 32} Cleveland Police Detective Shawn Wohl ("Det. Wohl") testified that he began his investigation of Hamilton in March 2024. Det. Wohl stated that Hamilton's cell phone records placed him at the scene of this crime. Det. Wohl further testified that D.L. was arrested while in possession of the stolen Murano. In his proffer, D.L. admitted to Det. Wohl that he was present during the Muncieez robbery and identified Hamilton as a participant in the robbery.

{¶ 33} Det. Wohl further testified to the following text exchange between a cell phone number associated with Hamilton and “Delow,” who Det. Wohl identified as Deangelo Bell:

[Delow]: Dis Spook?

[Hamilton]: Yea

[Delow]: Hell yea yk im salty doe

[Delow]: You coo brudda?

[Delow]: Time to lay low & stay militant now

[Hamilton]: Hn I’m finna call you

See State’s exhibit No. 300. Det. Wohl explained that the text messages were sent right after D.L. and the others were arrested. Det. Wohl understood the text exchange to mean that “one of our friends got caught, time for us to maybe knock it off and lay low and not commit any more crimes right now.” (Tr. 1002.)

{¶ 34} Det. Hale testified that he processed the 2020 silver Nissan Maxima associated with this aggravated robbery, which was reported stolen approximately a week before the incident. Det. Hale testified that “a 50-round box of Magtech .9 millimeter Luger containing 14 live rounds” was in the driver’s door pocket of the vehicle, along with cigarette butts, a black cloth face mask, a Nike Face cover and a Nike shoe. (Tr. 802.) The testimony of DNA analysts linked Hamilton’s DNA to all of the items submitted for testing, except the black cloth face mask. Additionally, when speaking with a Lyndhurst police detective, Det. Wohl learned that Hamilton was in possession of a Nissan Maxima when he was arrested.

April 15, 2024 — Maple Heights

{¶ 35} The incident on April 15, 2024, involved the attempted murder of M.G. in Maple Heights. On that day, Hamilton arranged to meet M.G. under the pretense of selling a firearm to M.G. The meeting was facilitated by Breonia Womack (“Womack”), Hamilton’s girlfriend at the time. Womack testified that she was originally charged in juvenile court in connection with this matter and entered into a plea agreement with the State in exchange for her testimony. According to Womack, on the day in question, they were at her house but then left because she wanted to get some food. Neither of them had any money, so Hamilton instructed Womack to take a picture of Hamilton’s gun with her phone and post it for sale on Instagram. There were responses to the post, with offers between \$500-\$600. At that point, Hamilton and Womack drove in a “gray Nissan” to a location in Maple Heights. (Tr. 453.)

{¶ 36} Once they arrived, Hamilton parked the car and M.G. approached the vehicle. M.G. opened the rear passenger door and was seated with one leg out of the door. The next thing she knew, Hamilton and M.G. started fighting over the gun and she exited the vehicle. Ultimately, Hamilton gained control of the weapon and pulled M.G. to the back of the building. Womack recalled two shots being fired. She jumped back into the car, and when Hamilton returned he told her if she said something, he was going to kill her. She further testified that she was “pretty sure” Hamilton sold the gun afterwards. (Tr. 459.)

{¶ 37} Alessandria Powell also testified regarding this incident. She stated that at approximately 3:00 p.m. she got her daughter from a daycare located in Maple Heights. Upon her arrival, she noticed a gray car parked two spaces to her left with “a gentleman and a lady sitting in the car.” (Tr. 591.) After she returned with her daughter and as she was leaving, she reached to the back seat to hand her daughter some food. As she looked to her side, she observed two men standing behind the gray car. She testified that one of the males had a gun. This male was pointing his gun at the other male, who was walking back towards the driveway. Powell immediately pulled out of the parking lot and called the daycare, who then called the police.

{¶ 38} M.G.’s mother, D.G., testified that she was on her way to M.G.’s apartment, which was behind the daycare, with a plate of food when he texted her that he had been shot. Upon her arrival, she discovered M.G. on the ground, outside of his apartment. M.G. was unable to get up and had a gunshot wound to the neck and “a knot on his head.” (Tr. 547.) D.G. testified that M.G. is now a paraplegic, meaning that he can use his hands, but not his legs. Testimony from the trauma surgeon who treated M.G. confirmed that M.G. sustained two gunshot wounds — one at the base of the left side of the neck and another in the right upper back.

{¶ 39} Maple Heights Police Officer Tyler Vasko testified that on April 15, 2024, at approximately 3:30 p.m., he responded to a call that a male had been shot. When he arrived, he found M.G. lying on the ground near a set of trash cans, with blood coming from his neck.

{¶ 40} Maple Heights Police Detective Thomas Halley (“Det. Halley”) testified that he also responded to the call and processed the scene. On scene, he located several shell casings, including two 9 mm shell casings. The firearms analyst testified that these shell casings matched the shell casings recovered from the shooting in Cleveland on April 9, 2024.

{¶ 41} Maple Heights Police Detective Marcus Scott (“Det. Scott”) also testified to the events of April 15, 2024. He also responded to the call with Det. Halley. During the course of his investigation, he went through M.G.’s phone and developed a working understanding from M.G.’s Instagram messages that the incident may have “been a gun sale gone bad.” (Tr. 522.) Det. Scott conducted a trace on the gun, which was a Glock 45. The trace confirmed that the gun was stolen.

{¶ 42} Following the conclusion of trial, the jury found Hamilton guilty of all counts, firearm specifications, and furthermore clauses as charged, except that he was found not guilty of Counts 26 and 27 and not guilty of the accompanying firearm specifications in Counts 5, 8, and 19-24. At sentencing, the parties and the trial court addressed the merger of certain counts and firearm specifications. The court then sentenced Hamilton to a minimum of 38 years in prison and a maximum of 43 years in prison. The court ordered that “the prison sentence imposed on Counts 3 and 23 in [this case] shall run consecutively to the 30 month prison sentence imposed in Case CR-688478[, resulting in] a total aggregate prison sentence [of] minimum of 40 years and 6 months in prison and a maximum of 45 years and 6 months in prison.” (Journal entry, Nov. 5, 2025.)

{¶ 43} It is from this order that Hamilton now appeals, raising five assignments of error, which shall be discussed together where appropriate.

II. Law and Analysis

{¶ 44} Within Hamilton’s assigned errors, he challenges his convictions and sentence by contending that (1) it was plain error to have a single trial for all of his charges; (2) the trial court imposed an unconstitutional trial tax by sentencing Hamilton to more than twenty times the sentence imposed on the testifying co-conspirators; (3) trial counsel was ineffective for failing to request the charges be severed for trial; (4) there is insufficient evidence of his identity as the perpetrator; and (5) his convictions are against the manifest weight of the evidence.

Separate Trials, Plain Error, and Ineffective Assistance of Counsel

{¶ 45} In Hamilton’s first and third assignments of error, he argues that his charges should have been severed for trial. He contends the trial court committed plain error in failing to do so, sua sponte, and defense counsel was ineffective for failing to request that the charges be severed for trial.

{¶ 46} We begin our discussion by noting that “[t]he law favors joining multiple criminal offenses in a single trial.’ This is because joint trials ‘conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial.’” *State v. Gordon*, 2018-Ohio-259, ¶ 18, quoting *State v. Franklin*, 62 Ohio St.3d 118, 122 (1991), and *Bruton v. United States*, 391 U.S. 123, 134 (1968). Crim.R. 8(A) governs the joinder of offenses in a single indictment and provides that two or more offenses may be charged together

if the offenses “are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.”

{¶ 47} Even if indictments are initially correctly joined under Crim.R. 8(A), the trial court should order separate trials under Crim.R. 14 if it appears the defendant is prejudiced by the joinder. The rule provides, in relevant part: “If it appears that a defendant or the state is prejudiced by a joinder of offenses . . . in an indictment . . . or by such joinder for trial together of indictments . . . the court shall order an election or separate trial of counts . . . or provide such other relief as justice requires.” *Id.*

A. Plain Error

{¶ 48} Ordinarily, we review the denial of severance under Crim.R. 14 for abuse of discretion. *State v. Spaulding*, 2016-Ohio-8126, ¶ 63, citing *State v. Hand*, 2006-Ohio-18, ¶ 166. Hamilton, however, never objected to the joinder and never sought severance under Crim.R. 14. He raises the issue for the first time on appeal. As a result, we review Hamilton’s claim of prejudicial joinder for plain error. *Gordon* at ¶ 22; *Lott* at 164.

{¶ 49} Crim.R. 52(B) affords appellate courts discretion to correct “[p]lain errors or defects affecting substantial rights” even though they were not brought to the attention of the court. The Ohio Supreme Court has cautioned that “[n]otice of plain error * * * is to be taken with the utmost caution, under exceptional

circumstances and only to prevent a manifest miscarriage of justice.” *Gordon* at ¶ 23, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. To successfully assert that a trial court committed plain error, a defendant must demonstrate an error that constitutes an obvious defect in the trial proceedings and demonstrate that the error affected the outcome of the trial. *State v. Rogers*, 2015-Ohio-2459, ¶ 22.

{¶ 50} Here, Hamilton argues that the offenses should have been severed for trial because the State “effectively tried seven unrelated incidents together, each involving different dates, different locations, and different witnesses” and nothing about these incidents “formed a coherent narrative.” (Hamilton’s Brief, p. 21-22.) As a result, Hamilton contends he was prejudiced by the “spillover” of trying multiple unrelated incidents together, which resulted in the jurors possibly transferring evidence from one incident to another. (Hamilton’s Brief, p. 23.)

{¶ 51} While “[i]t is the defendant’s burden to affirmatively demonstrate that joinder is prejudicial[.]” *Gordon* at ¶ 21, the State can overcome a defendant’s claim of prejudicial joinder by demonstrating either that (1) it could have introduced evidence of the joined offenses as other-acts evidence under Evid.R. 404(B) (the “other acts test”) or (2) the “evidence of each crime joined at trial is simple and direct” (the “joinder test”). *State v. Ford*, 2019-Ohio-4539, ¶ 104, quoting *State v. Lott*, 51 Ohio St.3d 160, 163 (1990); *State v. Franklin*, 62 Ohio St.3d 118, 122 (1991).

{¶ 52} Hamilton contends that the State can prove neither. The State counters that joinder would have been proper even if a motion to sever was filed.

The State further counters that Hamilton’s prejudice claim is unpersuasive because (1) the other-acts evidence was admissible under Evid.R. 404(B) and (2) the State’s evidence was simple and direct.

{¶ 53} Under the first method, the State must demonstrate that the evidence from the other case could have been introduced pursuant to the “other acts” test of Evid.R. 404(B). Under the second method, the State does not have to meet the stricter “other acts” admissibility test but only needs to show the evidence of each crime joined at trial is “simple and direct” (the joinder test). (Cleaned up.) *Lott* at 163. The Ohio Supreme Court has found that, “[i]f the state can meet the joinder test, it need not meet the stricter ‘other acts’ test of Evid.R. 404(B).” *State v. Mills*, 62 Ohio St.3d 357, 362 (1992), citing *Lott*. This is because “when simple and direct evidence exists, an accused is not prejudiced by joinder regardless of the nonadmissibility of evidence of these crimes as ‘other acts’ under Evid. R. 404(B).” (Cleaned up.) *Lott* at 163-164.

{¶ 54} There was no “spillover” of multiple, unrelated incidents tried together like Hamilton contends. Rather, the trial testimony demonstrates that the incidents were related in several respects as required by Crim.R. 8(A) — the incidents were of similar character and are based on two or more acts or transactions connected together.

{¶ 55} Here, the shooting in East Cleveland and the robbery of Q.M. in Lyndhurst occurred on the same day. These incidents took place within a few hours of each other and the same vehicle (the stolen Buick) was used in both incidents.

Furthermore, Hamilton admitted that he was in the Buick during the shooting in East Cleveland and the robbery in Lyndhurst. The forensic testimony regarding the shell casings matched the East Cleveland shooting to the Cleveland house shooting and the shooting of M.G. in Maple Heights. D.L. identified Hamilton as the male in the surveillance videos observed wearing a black Nike face mask and black North Face jacket. The Nike facemask was recovered in the stolen silver Nissan Maxima and matched Hamilton's DNA. The victim in the Muncie robbery testified that the assailants approached him and his aunt in a silver Nissan and Womack testified that Hamilton was driving a "gray Nissan" when they met M.G. for the "gun sale" in Maple Heights. Hamilton was found in possession of the stolen silver Nissan Maxima when he was arrested. Additionally, D.L. testified to Hamilton's participation in all the incidents and Hamilton's cell phone records indicated that he was present in the area of all the incidents. Thus, based on the foregoing, joinder of the offenses was proper.

{¶ 56} Moreover, even if we were to agree with Hamilton that the joinder was prejudicial, the State overcame any prejudicial effect because under the second method: the evidence in this case is simple and direct. Hamilton's claim that because the case "involved an enormous volume of evidence presented over a seventeen day trial, covering multiple unrelated incidents, different victims, different locations, and different dates[,] no reasonable jury could be expected to keep the evidence for each episode separate" is speculative. (Hamilton's Brief, p. 23.)

{¶ 57} As the *Torres* Court stated, “The mere possibility that the defendant might have a better choice of trial tactics if the counts are separated, or the mere possibility that he might desire to testify on one count and not on the other, is insubstantial and speculative; it is not sufficient to show prejudice.” *Id.*, 66 Ohio St.2d 340, 344 (1981), citing *Wangrow v. United States*, 399 F.2d 106, 112 (8th Cir. 1968). Moreover, the joinder “test does not depend on the amount of evidence presented as to the joined offenses but instead whether the jury was able to segregate the proof required for each of them.” *State v. Ferren*, 2011-Ohio-3382, ¶ 39 (8th Dist.). Indeed, “a trial court does not abuse its discretion in denying a motion for severance of trials when the state presents evidence that is direct, uncomplicated, and the jury demonstrated its ability to segregate the proof on each charge.” *State v. Ferren*, 2011-Ohio-3382, ¶ 40 (8th Dist.), citing *State v. Brooks*, 44 Ohio St.3d 185, 194 (1989).

{¶ 58} Here, the State presented simple and direct evidence as to each victim and the jury’s verdict indicated that it was able to segregate the proof on each charge. While the jury found Hamilton guilty of most counts, the jury found him not guilty of the accompanying firearm specifications on several of the counts. And with the shooting of M.G., the jury found Hamilton guilty of attempted murder and felonious assault but not guilty of aggravated robbery.

{¶ 59} Thus, we find that neither the joinder of the Hamilton’s charges nor the trial court’s failure to sua sponte separate the cases for trial constituted plain error. There was no obvious defect in the trial proceedings that affected the outcome

of the trial. Hamilton failed to demonstrate a “manifest miscarriage of justice” — if there had been a motion to sever, the court would have not abused its discretion by denying it. *Gordon*, 2018-Ohio-259 at ¶ 29, quoting *Long* at paragraph three of the syllabus.

{¶ 60} Accordingly, the first assignment of error is overruled.

B. Ineffective Assistance of Counsel

{¶ 61} In the third assignment of error, Hamilton contends that defense counsel was ineffective for failing to request severance of the charges.

{¶ 62} To establish ineffective assistance of counsel, Hamilton must demonstrate that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *State v. Trimble*, 2009-Ohio-2961, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to prove either prong of this two-part test makes it unnecessary for a court to consider the other prong. *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000), citing *Strickland* at 697.

{¶ 63} Furthermore, in Ohio, every properly licensed attorney is presumed to be competent, and a defendant claiming ineffective assistance of counsel bears the burden of proof. *State v. Davis*, 2021-Ohio-4015, ¶ 25 (8th Dist.), citing *State v. Black*, 2019-Ohio-4977, ¶ 35 (8th Dist.), citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). When evaluating counsel’s performance on an ineffective-assistance-of-counsel claim, the court “must indulge a strong presumption” that counsel’s performance “falls within the wide range of reasonable professional assistance.”

Strickland at 689; see *State v. Powell*, 2019-Ohio-4345, ¶ 69 (8th Dist.), quoting *State v. Pawlak*, 2014-Ohio-2175, ¶ 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.”).

{¶ 64} Here, defense counsel did not request to sever the charges. Hamilton asserts this failure to sever the unrelated charges for separate trials was not a strategic choice, but rather an oversight “that exposed the jury to precisely the kind of spillover prejudice severance is designed to prevent.” (Hamilton’s Brief, p. 27.) Hamilton, however, has not demonstrated that defense counsel rendered ineffective assistance of counsel by failing to request the severance. As discussed above, Hamilton failed to demonstrate that a motion to sever, if filed, would have been successful. This court has previously held that trial counsel cannot be deemed deficient or ineffective for failing to perform a futile act. *State v. Washington*, 2023-Ohio-1667, ¶ 145 (8th Dist.), citing *State v. May*, 2015-Ohio-4275, ¶ 35 (8th Dist.); *State v. Witherspoon*, 2011-Ohio-704, ¶ 33 (8th Dist.) (holding “the failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel and is not prejudicial”). Based on the record before us, we cannot say that Hamilton’s trial would have been different if defense counsel requested severance of the charges.

{¶ 65} Therefore, Hamilton’s third assignment of error is overruled.

Trial Tax

{¶ 66} In the second assignment of error, Hamilton contends that the trial court punished him for exercising his right to trial with a 38-43 year prison sentence

(“trial tax”), which is substantially longer than the punishment D.L. and Womack received.

{¶ 67} In *State v. Rahab*, 2017-Ohio-1401, the Ohio Supreme Court addressed vindictiveness in sentencing after the trial court sentenced a defendant to a longer prison term than was offered by the State in plea negotiations and stated that our review of the defendant’s sentence begins as “we do in any other appeal — with the presumption that the trial court considered the appropriate sentencing criteria.” *Id.* at ¶ 19, citing *State v. O’Dell*, 45 Ohio St.3d 140, 147 (1989). The *Rahab* Court stated, we then review

the entire record — the trial court’s statements, the evidence adduced at trial, and the information presented during the sentencing hearing — to determine whether there is evidence of actual vindictiveness. We will reverse the sentence only if we clearly and convincingly find the sentence is contrary to law because it was imposed as a result of actual vindictiveness on the part of the trial court. *See* R.C. 2953.08(G)(2); *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

Id.

{¶ 68} Here, Hamilton contends the disparity in sentencing between himself and D.L. and Womack is stark. According to Hamilton, Womack received no prison time and D.L. was sentenced to approximately two years, which Hamilton contends is “nearly twenty times shorter” than his sentence. (Hamilton’s Brief, p. 26.) Other than Hamilton’s assertions, however, there is nothing in the record demonstrating that the court acted in a vindictive way when imposing his sentence.

{¶ 69} First, neither D.L., Womack, or Hamilton were codefendants. According to the State, D.L. was not charged in connection with the same incidents as Hamilton. Rather, he was charged in a separate indictment involving two robberies. Whereas Hamilton “was charged in five separate incidents, three of which involved shootings, and in one of those shootings” the victim (M.G.) was permanently paralyzed. (State’s Brief, p. 19.) Also, D.L. was a cooperating witness for the State who entered into a plea agreement. The fact that he admitted guilt and took accountability is a factor the trial court could consider when sentencing. As the Ohio Supreme Court has stated, “The standard of punishment is necessarily different for those who plead and for those who go to trial. For those who plead, that fact itself is a consideration in sentencing, a consideration that is not present when one is found guilty by a jury.” *State v. Anderson*, 2017-Ohio-5656, ¶ 20, quoting *Corbitt v. New Jersey*, 439 U.S. 212, 224, fn. 14 (1978).

{¶ 70} Furthermore, at the sentencing hearing, the trial court explained its reasons for the sentence, finding that consecutive sentences were necessary to protect the community and to punish Hamilton, noting Hamilton’s criminal history and the life-changing injuries to M.G. The court also found that consecutive sentences are not disproportionate to the seriousness of Hamilton’s conduct and to the danger he poses to the community. The court also found that at least two of the multiple offenses committed were part of one or more courses of conduct, and the harm caused by said multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct

adequately reflects the seriousness of Hamilton's conduct. Lastly, the trial court's sentence was within the statutory range.

{¶ 71} After reviewing the entire record, we do not find any evidence indicating that the trial court acted in a vindictive manner. Hamilton's sentence is not contrary to law. Therefore, we decline to find that the trial court's sentence was a form of "trial tax."

{¶ 72} The second assignment of error is overruled.

Sufficiency of the Evidence

{¶ 73} In the fourth assignment of error, Hamilton argues that his convictions were not supported by sufficient evidence because he was never reliably identified as the perpetrator.

{¶ 74} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 2009-Ohio-3598, ¶ 12 (8th Dist.). An appellate court's function when reviewing sufficiency is to 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*, 2004-Ohio-6235, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 75} 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*, 2009-Ohio-3375, ¶ 25 (8th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). A sufficiency-of-the-

evidence argument is not a factual determination, but a question of law. *Thompkins* at 386.

{¶ 76} In *State v. Jones*, 2021-Ohio-3311, the Ohio Supreme Court cautioned:

[I]t is worth remembering what is not part of the court’s role when conducting a sufficiency review. It falls to the trier of fact to “resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” [*State v. McFarland*, 162 Ohio St.3d 36, 2020-Ohio-3343, 164 N.E.3d 316, ¶ 24], quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Thus, an appellate court’s role is limited. It does not ask whether the evidence should be believed or assess the evidence’s “credibility or effect in inducing belief.” *State v. Richardson*, 150 Ohio St.3d 554, 2016-Ohio-8448, 84 N.E.3d 993, ¶ 13, citing *Thompkins*, 78 Ohio St.3d at 386, 678 N.E.2d 541. Instead, it asks whether the evidence against a defendant, if believed, supports the conviction. *Thompkins* at 390 (Cook, J., concurring).

Id. at ¶ 16.

{¶ 77} Hamilton argues that because no witness was able to identify him, no forensic evidence linked him to any of the incidents, and his charges were improperly joined, the jury substituted cumulative suspicion for actual proof of his convictions. According to Hamilton, the proper remedy is to vacate the convictions and remand for separate trials where each charge must rise or fall on its own evidence. Hamilton’s argument is unpersuasive.

{¶ 78} The “[i]dentity of the perpetrator is an essential element that must be proved beyond a reasonable doubt.” *State v. Preston*, 2021-Ohio-2278, ¶ 27 (8th Dist.), quoting *State v. Johnson*, 2015-Ohio-1689, ¶ 13 (9th Dist.). Ohio courts have repeatedly recognized that identification can be demonstrated through direct or

circumstantial evidence. (Citations omitted.) *State v. Golden*, 2007-Ohio-3536,

¶ 16 (8th Dist.). As we stated in *State v. Kiley*, 2006-Ohio-2469:

It is well settled that the state may rely on circumstantial evidence to prove an essential element of an offense, because “circumstantial evidence and direct evidence inherently possess the same probative value[.]” “‘Circumstantial evidence’ is the proof of certain facts and circumstances in a given case, from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind.” “Since circumstantial evidence and direct evidence are indistinguishable so far as the jury’s fact-finding function is concerned, all that is required of the jury is that it weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt.” Although inferences cannot be based on inferences, a number of conclusions can result from the same set of facts. Therefore, the [trier of fact] may employ a series of facts or circumstances as the basis for its ultimate conclusion.

(Citations omitted.) *Id.* at ¶ 9.

{¶ 79} Hamilton fails to recognize his own admission regarding his involvement in the East Cleveland and Lyndhurst offenses as well as the forensic, firearm, and digital evidence, and overlapping witness testimony, including Womack’s and D.L.’s testimony, collectively established his identity as the assailant.

{¶ 80} Here, D.L.’s testimony connected Hamilton to the East Cleveland, Lyndhurst, and Cleveland incidents, and Womack’s testimony linked Hamilton to the shooting of M.G. in Maple Heights. Additionally, the State presented DNA analysis linking Hamilton to cigarette butts, a face mask, and a shoe recovered from vehicles associated with robberies and shootings, and the DNA evidence placed Hamilton in those vehicles. “DNA evidence identifying a defendant as a major contributor to the DNA profile found on an object linked to a crime is sufficient

evidence to sustain a conviction.” *State v. Preston*, 2021-Ohio-2278, ¶ 28 (8th Dist.), citing *State v. Brown*, 2013-Ohio-2690, ¶ 31, 35 (8th Dist.) (the evidence was sufficient where the defendant’s DNA profile was the major contributor to a sample collected from a shirt connected to the crime, notwithstanding the existence of unidentified minor contributors).

{¶ 81} Furthermore, forensic evidence, including the recovery of magazines, ammunition, and holsters from the stolen vehicles corroborated the firearms used in the offenses. The ballistic evidence suggested that the Maple Heights shooting involved only one gun, and shell casings from the Maple Heights shooting matched shell casings from the East Cleveland shooting and Cleveland shooting. The shell casings evidence linked the different incidents to the same firearm further supporting the conclusion that the same weapon was used in multiple offenses. Hamilton’s cell phone records placed him at or near the scenes of multiple offenses. Also, video and pictures from Hamilton’s phone depicted Hamilton wearing clothing that matched the clothing in surveillance footage and described by witnesses.

{¶ 82} The foregoing evidence was sufficient to establish that Hamilton was the perpetrator of all the offenses. When viewing Hamilton’s own admission, the witnesses’ testimony, the forensic links, along with the ballistics and digital evidence in a light most favorable to the State, any rational trier of fact could find beyond a reasonable doubt that Hamilton committed the offenses associated with each incident.

{¶ 83} Therefore, the fourth assignment of error is overruled.

Manifest Weight

{¶ 84} In the fifth assignment of error, Hamilton argues that his convictions are against the manifest weight of the evidence for the same reasons he contends in his sufficiency argument.

{¶ 85} While the test for sufficiency requires a determination of whether the prosecution has met its burden of production at trial, a manifest-weight challenge “questions whether the prosecution has met its burden of persuasion.” *Bowden*, 2009-Ohio-3598, ¶ 12 (8th Dist.), citing *Thompkins*, 78 Ohio St.3d 380 at 386. The Ohio Supreme Court in, *State v. Reillo*, 2026-Ohio-2701, recently clarified the manifest-weight-of-the evidence analysis, stating that

“[w]eight of the evidence concerns ‘the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on *its effect in inducing belief*.’”

(Emphasis added in *Thompkins*.)

Id. at ¶ 25, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12, quoting *Thompkins* at ¶ 24, quoting *Black’s Law Dictionary* (6th Ed. 1990).

{¶ 86} The *Reillo* Court went on to say that under a manifest-weight review, a 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.” (Cleaned up.) *Id.* at ¶ 26. However, an appellate court “reviewing a manifest-weight challenge must still give some deference to a fact-finder’s credibility determinations, [and sit] as the thirteenth juror only when evidence contradicts a fact-finder’s findings . . . or when a witness’s testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” (Cleaned up.) *Id.* at ¶ 3.

{¶ 87} Hamilton contends the jury lost its way by convicting him even though there was no eyewitness identification, there was a lack of forensic evidence, and the State relied on the cumulative effect of multiple unrelated accusations, rather than incident-specific proof. Hamilton, however, has not pointed to any contradictory material facts or directly impeached testimony, nor has he presented any evidence satisfying the “fantastical” standard as set forth in *Reillo*. This is not the exceptional case requiring this court to step in as the “thirteenth juror,” reverse his convictions, and order a new trial. Affording proper deference to the factfinder’s verdict, we find that the jury did not clearly lose its way and create such a manifest miscarriage of justice requiring reversal.

{¶ 88} Therefore, we find that Hamilton’s convictions are not against the manifest weight of the evidence, and his fifth assignment of error is overruled.

{¶ 89} Accordingly, judgment 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 appellant's conviction 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.

MARY J. BOYLE, JUDGE

LISA B. FORBES, P.J., and
EILEEN T. GALLAGHER, J., CONCUR