

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 116080
	:	
v.	:	
	:	
JEROME DIGGS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 22, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-678739-B

Appearances:

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

Eric M. Levy, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Jerome Diggs appeals his convictions in this case. Upon review, we affirm.

{¶ 2} On February 21, 2022, Diggs and a codefendant, Nicholas Johnson, were charged under a multicount indictment with offenses arising from an incident

occurring on or about January 14, 2022, that resulted in the death of S.R. and serious injury to T.L. Diggs was charged with two counts each of murder and felonious assault, as well as one count each of attempted murder, discharge of a firearm on or near prohibited premises, tampering with evidence, improperly discharging into habitation, and gross abuse of a corpse.¹ The counts included firearm and forfeiture-of-a-weapon specifications. The case against Diggs proceeded to a jury trial. The jury returned a verdict of guilty on all nine counts along with the accompanying firearm specifications. Following merger, the trial court imposed an aggregate total sentence of life with the possibility of parole after 32 years minimum to 37.5 years maximum in prison. This appeal followed.

{¶ 3} Diggs raises five assignments of error on appeal. Under his first assignment of error, he argues the State failed to present sufficient evidence to sustain his convictions.

{¶ 4} When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing court must consider the evidence in a light most favorable to the State and determine whether the evidence, if believed, would convince an average person that each element of the crime had been met. *State v. McClain*, 2026-Ohio-3934, ¶ 1. In conducting our de novo review, we are mindful that “[c]ircumstantial evidence and direct evidence inherently possess the same

¹ The statutory sections for the charged offenses included R.C. 2903.02(A) and (B), 2923.02/2903.02(A), 2903.11(A)(1) and (2), 2923.162(A)(3), 2921.12(A)(1), 2923.161(A)(1), and 2927.01(B).

probative value, and it is within the province of the factfinder to draw reasonable inferences from the evidence presented.” (Cleaned up.) *State v. Shabazz*, 2016-Ohio-1055, ¶ 18. Additionally, the trier of fact is “free to believe or disbelieve all, part, or none of the testimony of the witnesses presented at trial.” (Cleaned up.) *State v. Brown*, 2025-Ohio-5854, ¶ 44 (8th Dist.). “A verdict should not be disturbed on appeal unless reasonable minds could not reach the trier of fact’s conclusion.” *State v. Jordan*, 2023-Ohio-3800, ¶ 16, citing *State v. Montgomery*, 2016-Ohio-5487, ¶ 74.

{¶ 5} In this case, testimony and evidence showed that on January 14, 2022, Diggs, S.R., and Johnson exited a residence on Olympia Avenue in Cleveland where they had been drinking alcohol and smoking marijuana; Diggs was seen on video carrying a .40-caliber handgun, and Johnson was carrying a 9 mm handgun; shortly thereafter, the three of them were riding around together in Johnson’s Chevy Cruze; they encountered T.L., who was in his vehicle, and a shooting incident occurred; during this encounter, S.R. was shot in the back of the head and killed with a .40-caliber bullet, and T.L. was shot in the eye; and S.R.’s body thereafter was transported to and discarded behind an abandoned home. A responding officer testified to hearing “multiple gunshots” very close to his location. He responded to the residence of M.T., who had called and reported a male was shot in the face. The responding officer went to the hospital and met with T.L., who provided physical descriptions of the potential suspects that were involved with the shooting. A crime-scene detective testified to a bullet hole to M.T.’s home, a spent bullet located inside

the home, and shell casings recovered at the scene of the shooting. The record shows there were eleven 9 mm shell casings and seven 40 mm shell casings recovered on the street where the shooting occurred. The 40 mm shell casings matched a 40 mm handgun that was recovered from a third party on a later date. DNA evidence from the Chevy Cruze, S.R.'s body, and the recovered firearm had a positive match association to Diggs; and it was determined that the bullet recovered from S.R.'s head was fired from the recovered firearm.

{¶ 6} Upon the initial investigation, which was prior to any lab reports, the homicide detective believed it was likely that the bullet that struck the back of S.R.'s head, which was at a downward trajectory, entered through the roof of the Chevy Cruze. However, the detective testified that investigations are fluid and opinions can change after new and additional evidence is obtained. After obtaining further information during his investigation, the detective believed that Diggs "shot up the car after the fact." The State's theory of the case was that Diggs accidentally shot S.R. while shooting at T.L. and then tried to cover it up. The State posited that Diggs discarded S.R.'s body, tried to clean his blood from the backseat and to conceal the bullet holes in the car, and could have shot bullet holes through the roof to make it appear as though they were being shot at from outside. Although the trace-evidence scientist testified to four shots that entered through the roof of the vehicle with one not having a strike point that possibly could be the bullet that struck S.R., she also indicated that it may not have had enough energy to create a strike point and that

“it’s possible that somebody may have picked up a bullet that just didn’t create a hole.”

{¶ 7} Johnson, who was also charged in the case, testified to the shooting incident that occurred. He confirmed that he had a 9 mm handgun and Diggs had a .40-caliber handgun when leaving the Olympia Avenue home where they had been smoking and drinking with S.R., and that the three of them, who were close friends, were riding around in the Chevy Cruze. According to his testimony, they encountered another vehicle, he heard bullets hitting his car, and he hopped out of his vehicle and fired his 9 mm handgun at the other vehicle as it was driving past them. He stated that Diggs also was armed, but Johnson did not recall certain details and did not know what Diggs or S.R. were doing as he was firing at the other vehicle. When he got back into the Chevy Cruze, he saw that S.R. was dead. He testified that Diggs then drove to a house and “dumped” S.R.’s body there. Johnson indicated that Diggs kept his car and when he returned it, the bullet holes were fixed and there was no longer blood in the backseat. When Johnson first spoke to the police, he admitted to the shooting, but he did not disclose that S.R. died, because he was scared. He admitted that he initially did not tell the police the whole truth. He was offered a plea deal and agreed to testify in this case. Johnson denied that his car was shot up after S.R. was killed. Other testimony and evidence were provided in the case.

{¶ 8} Although Diggs points to selective evidence favorable to his defense and claims the physical evidence contradicted the State’s theory and supports his

contention that an unknown exterior shooter fired upon the Chevy Cruze, we are not persuaded by any of Diggs's challenges to the sufficiency of the evidence. Reasonable inferences could be drawn by the trier of fact from the direct and circumstantial evidence presented. After viewing the testimony and evidence presented in a light most favorable to the prosecution, we find that the State presented sufficient evidence upon which a rational trier of fact could have found each of the essential elements of the crimes charged against Diggs. The State met its burden of production at trial. The first assignment of error is overruled.

{¶ 9} Under his second assignment of error, Diggs claims his convictions are against the manifest weight of the evidence. 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.) *State v. Reillo*, 2026-Ohio-2701, ¶ 26. “[A]ppellate courts may vacate a jury’s verdict and order a new trial only in the exceptional case in which the evidence weighs heavily against the conviction.” (Cleaned up.) *Id.* at ¶ 27. In such cases, “the court sits as a thirteenth juror who may disagree with the fact-finder’s resolution of the *conflicting evidence*[,]” but “[i]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” (Cleaned up, emphasis in original.) *Id.* at ¶ 27-28. Further, “[i]f the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is

consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.” (Cleaned up.) *Id.* at ¶ 28.

{¶ 10} Diggs argues that the State relied primarily on DNA evidence to place him at the scene of the crime and to link him to the weapon. However, our review shows the DNA evidence was introduced along with other testimony and evidence in the matter and corroborated the State’s theory in the case. The State met its burden of persuasion for each of the convictions. Upon conducting a manifest-weight review, we do not find this to be a case in which the jury clearly lost its way or the exceptional case in which the evidence weighs heavily against the convictions. The second assignment of error is overruled.

{¶ 11} Under his third assignment of error, Diggs claims his right to confrontation was violated and the trial court erred by denying his Crim.R. 29 motion regarding counts where the named victims, T.L. and M.T., did not testify.

{¶ 12} Because no objection was raised regarding the challenged testimony, the standard of review is for plain error. To establish plain error, appellant must show “that an error occurred, that the error was plain, and that the error affected his substantial rights -- which [has been] interpreted to mean that the error affected the outcome of the trial.” *State v. Brinkman*, 2022-Ohio-2550, ¶ 45, citing *State v. Rogers*, 2015-Ohio-2459, ¶ 22. Notice of plain error is to be taken “with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Nicholson*, 2022-Ohio-374, ¶ 37 (8th Dist.), quoting

State v. Long, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. Appellant has the burden of demonstrating plain error occurred. *See id.*

{¶ 13} Diggs has failed to demonstrate that plain error occurred. The officer who briefly spoke to T.L. at the hospital testified to personally hearing the gunfire, responding to the scene, observing that T.L. had been shot in the eye, obtaining descriptions of vehicles and suspects that may have been involved, and to conducting his ongoing investigation of the case. The crime-scene detective who responded to M.T.'s home testified to his own observations when he processed the crime scene. Other testimony and evidence were provided in the case linking Diggs to the crimes. No manifest miscarriage of justice occurred. Additionally, the absence of testimony from T.L. and M.T. did not render the evidence insufficient in this case. The third assignment of error is overruled.

{¶ 14} Under his fourth assignment of error, Diggs claims defense counsel rendered ineffective assistance. To establish ineffective assistance of counsel, he must demonstrate that counsel's performance fell below an objective standard of reasonable representation and that he was prejudiced by that deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶ 15} Diggs argues that counsel failed to object to the jury instruction on transferred intent. However, the jury instruction on transferred intent was properly given in this case. The record shows that Diggs was convicted of murder based on the theory of transferred intent because he struck and killed S.R. while he and Johnson were purposely shooting multiple rounds at T.L., who was the intended

victim and was shot in the eye. Indeed, “an intent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death.” *State v. Davis*, 2026-Ohio-345, ¶ 35 (8th Dist.), citing *State v. Garner*, 74 Ohio St.3d 49, 60 (1995). “Under the doctrine of transferred intent, even if the victim was not the intended target, a defendant is as criminally culpable for the harm caused to the actual victim as he [or she] would be if the victim had been the intended target.” *Id.* at ¶ 57, citing *State v. Calhoun*, 2015-Ohio-5505, ¶ 16 (12th Dist.). Though Diggs believes his interpretation of the forensic evidence in this case should be accepted, the instruction on transferred intent was warranted by the direct and circumstantial evidence in the case, and no valid objection could have been made.

{¶ 16} Diggs also argues that his counsel was ineffective in failing to object to a detective’s testimony regarding the bullet trajectories. However, this testimony was admissible under Evid.R. 701, and defense counsel’s decision to challenge the testimony on cross-examination was a reasonable trial strategy.

{¶ 17} Diggs further argues that his counsel failed to object to statements made by the prosecutor during opening and closing arguments. He refers to the prosecutor’s comments for the jurors to act as “keepers of justice,” alleged vouching for the DNA evidence, and comments he argues appealed to the jurors’ civic duty. We do not find that the remarks of the prosecutor amounted to prosecutorial misconduct, nor do we find Diggs has demonstrated ineffective assistance of counsel by any failure to object.

{¶ 18} As to these and other arguments made, appellant has failed to demonstrate either deficient performance or prejudice as required for showing ineffective assistance of counsel. The fourth assignment of error is overruled.

{¶ 19} Under his fifth assignment of error, Diggs argues the trial court erred and violated his right to due process by instructing the jury on transferred intent because he claims the physical evidence does not support the charge. We disagree, and as discussed above find that the jury instruction on transferred intent was properly given and supported by the evidence in this case. The fifth assignment of error is overruled.

{¶ 20} Judgment 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
EILEEN A. GALLAGHER, J., CONCUR