[Cite as *State v. Miller*, 2026-Ohio-4474.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. ANTONIO MILLER Appellant	C.A. No. 31507 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR-2022-09-3351

DECISION AND JOURNAL ENTRY

Dated: November 12, 2026

MANNING, Judge.

{¶1} Defendant-Appellant, Antonio Miller, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This appeal arises from a shooting that occurred in the driveway of an Akron residence. Several weeks before the shooting, the victim ("Mother") had allowed her youngest daughter ("Younger Daughter") to return to her home. Younger Daughter was in the process of ending a romantic relationship with Mr. Miller. Apart from its tumultuous nature, their relationship was further complicated by the fact that Younger Daughter had agreed to testify against Mr. Miller in a pending criminal matter.

{¶3} The afternoon before the shooting, Mr. Miller began calling and text messaging Younger Daughter. His attempts to contact her continued throughout the night and into the following morning. That morning, he also repeatedly drove to Mother's house. Mr. Miller

removed parts from Younger Daughter's car, dumped her possessions on a nearby street, and refused to stay away. Mother eventually called the police and, following their arrival, Mr. Miller did not reappear.

{¶4} Unbeknownst to Mr. Miller, Younger Daughter's father was able to repair her car that afternoon. She drove it to a relative's home that evening. Younger Daughter later called Mother and asked her to help with a situation that had arisen there. Although it was highly unusual for Mother to leave her house in the evening due to her work schedule, she drove her car to the relative's home. She returned home shortly after 10:30 p.m.

{¶5} Minutes before Mother's arrival, surveillance cameras captured two individuals creeping through a wooded area next to Mother's house. The individuals crouched down and waited at the edge of the woods. When Mother's car entered her driveway and pulled next to her house, one of the individuals quickly moved across her front lawn and crept up the driveway. The individual shot Mother ten times through her driver's side window and car door. The individual then ran back to the wooded area and fled with the second individual.

{¶6} Mr. Miller quickly became a person of interest in the shooting, but the police were unable to locate him for several days. Their investigation uncovered additional surveillance footage that captured the movements of the two individuals involved in the shooting immediately before and after the incident. Footage showed them arriving in a dark sedan and driving east after running back to the car. The police learned that Mr. Miller frequently drove a black Chevy Impala belonging to his mother. They learned that the car had several bright yellow air freshener trees hanging from its rearview mirror. The police were able to find surveillance footage from an intersection approximately four-to-five minutes away from the spot where the dark sedan had

parked. The footage appeared to show a Chevy Impala with yellow air fresheners hanging from its rearview mirror driving away from the area of the shooting several minutes after it occurred.

{¶7} Three days after the shooting, two officers spotted Mr. Miller walking down a street in Akron. When they tried to speak with him, Mr. Miller ran. The officers were forced to Taser him to stop him. Upon his arrest, the officers found car keys and a fob in Mr. Miller's pocket as well as the temporary tag for his mother's Chevy Impala. The police were unable to locate the car for an additional 19 days.

{¶8} Mr. Miller was indicted for aggravated murder, murder, felony murder, felonious assault, and two counts of having a weapon under disability. His indictment also included four firearm specifications. The matter proceeded to trial at which the State argued that Mr. Miller was either the principal offender or was complicit in the shooting. A jury found him not guilty of his two counts for having a weapon under disability but guilty of his remaining charges and specifications. The trial court sentenced him to a total of 36 years to life in prison.

{¶9} Mr. Miller now appeals from the trial court's judgment. He raises four assignments of error for review.

II.

ASSIGNMENT OF ERROR I

> [MR. MILLER'S] CONVICTIONS FOR AGGRAVATED MURDER, IN VIOLATION OF SECTION 2903.01(A) OF THE OHIO REVISED CODE, MURDER, IN VIOLATION OF SECTION 2903.02(A) OF THE OHIO REVISED CODE, MURDER (FELONY MURDER), IN VIOLATION OF SECTION 2903.02(B) OF THE OHIO REVISED CODE, AND FELONIOUS ASSAULT, IN VIOLATION OF SECTION 2903.11(A)(2) OF THE OHIO REVISED CODE, ARE UNCONSTITUTIONAL AS IT IS BASED ON INSUFFICIENT EVIDENCE, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE, SECTIONS TEN AND SIXTEEN OF THE OHIO CONSTITUTION.

{¶10} In his first assignment of error, Mr. Miller argues that his convictions are based on insufficient evidence. We do not agree.

{¶11} Whether a conviction is supported by sufficient evidence is a question of law, which this Court reviews de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). This Court must

> examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

State v. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "In essence, sufficiency is a test of adequacy." *Thompkins* at 386.

{¶12} "The identity of a perpetrator must be proved by the State beyond a reasonable doubt." *State v. Dumas*, 2021-Ohio-1534, ¶ 7 (9th Dist.). "Like any other element of an offense, identity may be established through direct or circumstantial evidence." *State v. Jackson*, 2017-Ohio-635, ¶ 7 (9th Dist.). The two types of evidence "inherently possess the same probative value . . . ." *Jenks* at paragraph one of the syllabus.

{¶13} Surveillance footage and a map introduced at trial established that Koerber Avenue, the street on which Mother lived, was bisected by a wooded area and railroad tracks. Mother lived just to the west of the wooded area along with two other neighbors. To the east of the wooded area, Koerber Avenue continued and ran east to Manchester Road.

{¶14} Younger Daughter testified that, a few weeks before the murder, she began staying with Mother. She did so because she was in the process of ending her relationship with Mr. Miller. She described their relationship as toxic. She indicated that, the previous spring, she and Mr. Miller had been charged with drug-related offenses after the police raided their residence. Younger Daughter agreed to testify against Mr. Miller in exchange for a favorable plea deal. She indicated

that she never told Mr. Miller about her plea deal, but he nevertheless learned of it. She agreed that his knowledge of that fact concerned her because he was "crazy."

{¶15} Younger Daughter admitted that she was still communicating with Mr. Miller in the days leading up to the murder and spent time with him at a motel. She testified that she finalized her decision to end their relationship during that same period, and Mr. Miller did not react well. The State produced a call log from Younger Daughter's phone. The log showed that, beginning the afternoon before the murder and continuing until just after 1:00 p.m. on the day of the murder, Mr. Miller spoke with Younger Daughter nine times and attempted to call her 118 times. Mr. Miller also sent text messages to Younger Daughter and Mother. In the texts to Younger Daughter, Mr. Miller referred to her as "snitch b*tch" and "police a**[.]" There was testimony that both terms refer to someone who is cooperating with the police. In the texts to Mother, Mr. Miller wrote that Younger Daughter had nothing to fear from the drug charges they incurred because he would not have let anything happen to her. He wrote: "just tell her I know she talked I been keepin my mouth closed since I got out about it tell her she didn't get that past me[.]"

{¶16} Younger Daughter testified that, in addition to his phone call attempts, Mr. Miller came to Mother's house several times on the morning of the murder. On one of those occasions, he damaged Younger Daughter's car, rendering it unusable. On another occasion, he dumped her clothes on a nearby street. Younger Daughter testified that she ultimately called Mother for help because Mr. Miller kept coming back and was scaring her. She testified that Mother called the police, and they came to the house. According to Younger Daughter, the police spotted Mr. Miller as he left, and Mr. Miller did not return after their arrival.

{¶17} Regarding the damage to her car, Younger Daughter testified that Mr. Miller removed a part she needed to start it. She testified that she called her dad later that day, and he was able to repair her car. She testified that she never told Mr. Miller her car had been repaired. Later that night, Younger Daughter used her car to visit a relative.

{¶18} Several witnesses testified that Mother never left her house after 8:00 p.m. due to her work schedule. Her daughters were both aware of that fact as were the two neighbors that lived on her side of Koerber Avenue. On the evening of the murder, however, Younger Daughter called Mother and asked her to come to their relative's home to help resolve a situation. Mother did so, and the evidence showed that she did not arrive back at home until just after 10:30 p.m. Surveillance footage from Mother's house as well as a neighbor's house captured events that unfolded around that time. Shortly before Mother's arrival, two individuals crept through the woods to the east of her house, crouched down, and waited at a guardrail near the edge of the woods. When Mother pulled into her driveway, one of those individuals quickly crossed her yard, crept up her driveway, and shot Mother as she sat in the driver's seat of her car. The individual then ran back through the woods along with the second individual.

{¶19} Younger Daughter testified that Mr. Miller knew about a hidden path that ran through the woods and connected to the other side of Koerber Avenue because she had told him about the path while they were dating. She testified that she knew Mr. Miller was the one behind Mother's murder because no one else had any reason to hurt Mother. The State theorized that Mr. Miller or his accomplice accidentally killed Mother instead of Younger Daughter because Mr. Miller thought Younger Daughter had borrowed Mother's car due to her own car being damaged.

{¶20} Mother's older daughter ("Older Daughter") testified that she was living in Florida at the time of the murder. She was aware that Younger Daughter was living with Mother while

ending her relationship with Mr. Miller. Older Daughter described her sister's relationship with Mr. Miller as "a downhill spiral." She testified that she had advised Younger Daughter to leave Mr. Miller, cautioning her that he was "going to hurt one of us . . . ." She testified that she learned of Mother's death when her cousin called her screaming, "Antonio shot your mom. Antonio shot your mom."

{¶21} Both Younger Daughter and Older Daughter testified that, following Mother's death, their family held a vigil for her. The vigil occurred at a park. Both sisters testified that the family left the park early because they spotted Mr. Miller in one of the two vehicles he drove. They testified that the family decided to hold the remainder of the vigil at Mother's house to avoid Mr. Miller's presence. Nevertheless, Mr. Miller also came to the house.

{¶22} Younger Daughter testified that Mr. Miller always drove one of two cars. Both cars belonged to his mother. The first car was a blue Chevy Equinox. The second was a black Chevy Impala. There was evidence that the black Impala had several bright yellow air fresheners hanging from its rearview mirror.

{¶23} Detective Daniel Gump testified as a member of the Crime Scene Unit. He introduced footage the police collected from area cameras following the murder. Cameras from areas to the east of the woods on Koerber Avenue captured a dark sedan parking on the road around 10:30 p.m., two individuals emerging from the car, and those individuals walking toward the woods that led to Mother's house. Footage showed two individuals running back to the car a few minutes later, and the car being driven east towards Manchester Road.

{¶24} The police were unable to obtain any security footage from the intersection of Koerber Avenue and Manchester Road. They were, however, able to obtain footage from the intersection of Manchester Road and West Thorton Street. Detective Brian Lucey testified that

intersection was about a four-to-five-minute drive from the spot where the dark sedan had been parked on Koerber Avenue. He testified that footage from that intersection captured what appeared to be a black Chevy Impala traveling northbound on Manchester Road (i.e., away from Koerber Avenue). He testified that the car appeared to have "a bunch of yellow air fresheners" hanging from its rearview mirror, consistent with the car Mr. Miller was known to drive.

{¶25} A crime analyst from the Akron Police Department testified that she was asked to analyze phone records for two cell phone numbers, both of which belonged to Mr. Miller. She testified that she was not able to provide location data for either phone around the time of the murder. She explained that both phones were either turned off or placed in airplane mode just after 9:15 p.m. She testified that neither phone was used until after 1:00 a.m. the following morning.

{¶26} Detective Lucey testified that, within hours of the murder, officers were dispatched to the home of Mr. Miller's mother to try to locate Mr. Miller and his mother's Chevy Impala. Neither Mr. Miller nor the car were present. Because Mr. Miller was a person of interest, Detective Lucey testified that officers were instructed to arrest him on sight. Three days after the murder, Officer Anthony Trimble spotted Mr. Miller walking down the street in Akron. Officer Trimble testified that he and his partner tried to speak with Mr. Miller, but he ran. The officers were forced to Taser Mr. Miller to secure him.

{¶27} At the time of his arrest, Mr. Miller had car keys with a fob in his pocket as well as a temporary tag for a vehicle. Detective Lucey testified that officers tried canvassing the area for the car to which the keys belonged by using the key fob but were unable to locate it. As for the temporary tag, the detective confirmed that it belonged to the missing Chevy Impala. Detective Lucey testified that its removal would make it more difficult to find the car and, at that point,

officers still had not been able to locate it. He testified that the police received a CARFAX alert 15 days after the murder, notifying them that the car had been taken to a Valvoline service station. The detective went to the service station and was able to obtain a photograph of the car from when it had been brought in for service. The photograph showed several yellow air freshener trees hanging from the car's rear view mirror. Detective Lucey testified that it took the police 22 days to find the car, at which point it was being driven by Mr. Miller's brother.

{¶28} Detective Lucey testified that the police did not find the firearm used to shoot Mother for several months. The firearm was recovered during an unrelated drug investigation and matched to this incident through a database used to track spent shell casings. Detective Lucey testified that the police were unable to find any connection between the man who had the gun and Mr. Miller. Nevertheless, the detective testified that criminals commonly sell or trade firearms on the street after using them to commit a crime.

{¶29} Detective Lucey testified regarding several text messages that Mr. Miller sent from one of his cell phones after the murder. About nine hours after the murder, Mr. Miller texted someone: "Can u call me important[.]" A few minutes later, he texted: "Call me I'm shakin I had to throw all my phones away[.]" When the recipient responded to Mr. Miller's messages the following day, Mr. Miller texted: "I'm hit u off another private number in 10 mins answer my guy I'm tossin this one rite now[.]" The evidence showed that Mr. Miller was arrested the next day with the cell phone from which he had sent the foregoing texts. Detective Lucey confirmed that the police were unable to recover any other cell phones for Mr. Miller, including the phone he used to repeatedly call and text Younger Daughter before the murder.

{¶30} Mr. Miller has not challenged the State's proof with respect to any individual elements of his offenses. He argues that his convictions are based on insufficient evidence because

they were the result of inference stacking. He notes that the State never produced evidence linking him directly to the shooting. For example, he argues that the State failed to match shoeprints at the scene to him, connect him to the murder weapon, or place him at the scene via his cell phone data, DNA evidence, or testimony that his build resembled that of the shooter. Mr. Miller argues that there was no evidence he had a motive to kill Mother and, had he been involved, he would have recognized the difference between Mother's car and Younger Daughter's car. According to Miller, there was insufficient circumstantial evidence to establish his culpability.

{¶31} Viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the State proved beyond a reasonable doubt Mr. Miller's identity as either the shooter or his accomplice. *See Jenks*, 61 Ohio St.3d 259 at paragraph two of the syllabus. A lack of direct evidence was not detrimental to the State's case, as the State set forth a wealth of circumstantial evidence. *See Jackson*, 2017-Ohio-635, at ¶ 7 (9th Dist.) (identity can be proven through circumstantial evidence). The State set forth evidence that Mr. Miller was angry with Younger Daughter for ending their relationship and agreeing to testify against him. It set forth evidence that, during the 24 hours before the murder, he relentlessly tried to contact her, harassed her in person, damaged her car, and mistreated her personal belongings. Because Mr. Miller damaged Younger Daughter's car, the jury reasonably could have inferred that he would not have expected her to be able to drive the car later that evening. The jury also reasonably could have inferred that, much like Mother's family and neighbors, Mr. Miller knew Mother never left the house after 8:00 p.m. The State set forth circumstantial evidence to support its theory that Mother was killed due to her being mistaken for Younger Daughter.

{¶32} The State set forth evidence that a car matching the description of the one Mr. Miller drove was spotted in the area of the shooting around the time of the murder. It set forth evidence

that his phones were either shut down or placed in airplane mode at that time, meaning that no location data was available for him. The evidence showed that, a few hours after the shooting, Mr. Miller texted someone to call him about an "important" matter because he was "shakin" and "had to throw all [his] phones away[.]" The jury also heard that Mr. Miller ran from the police three days after the shooting, forcing them to Taser him. *See State v. McCormick*, 2019-Ohio-2204, ¶ 19 (9th Dist.) (flight may be considered as consciousness of guilt). Finally, the evidence showed that the police were unable to locate the Chevy Impala Mr. Miller drove for 22 days after the shooting but that, when he was arrested three days after the shooting, Mr. Miller had the car's temporary tag in his pocket. The jury reasonably could have inferred that he disposed of his phones and removed the car's tag in the wake of the shooting because he either perpetrated or helped perpetrate it. Upon review, Mr. Miller has not shown that his convictions are based on insufficient evidence. Accordingly, his first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> [MR. MILLER'S] CONVICTIONS FOR AGGRAVATED MURDER, IN VIOLATION OF SECTION 2903.01(A) OF THE OHIO REVISED CODE, MURDER, IN VIOLATION OF SECTION 2903.02(A) OF THE OHIO REVISED CODE, MURDER (FELONY MURDER), IN VIOLATION OF SECTION 2903.02(B) OF THE OHIO REVISED CODE, AND FELONIOUS ASSAULT, IN VIOLATION OF SECTION 2903.11(A)(2) OF THE OHIO REVISED CODE, ARE UNCONSTITUTIONAL AS THE CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE, SECTIONS TEN AND SIXTEEN OF THE OHIO CONSTITUTION.

{¶33} In his second assignment of error, Mr. Miller argues that his convictions are against the manifest weight of the evidence. We disagree.

{¶34} A conviction that is supported by sufficient evidence may still be found to be against the weight of the evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

> In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and 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.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist. 1986). "A reversal on this basis is reserved for the exceptional case in which the evidence weighs heavily against the conviction." *State v. Croghan*, 2019-Ohio-3970, ¶ 26 (9th Dist.).

{¶35} In his manifest weight argument, Mr. Miller argues that there was no evidence he had a grudge against Mother. He notes that no witnesses claimed his build matched the shooter's build and the vehicles he allegedly drove "were all very common vehicles." According to Mr. Miller, "there was a large amount of disagreement within the testimony as to the vehicle that was used for the homicide." He notes that the jury heard testimony about both a blue Chevy Equinox and a black Chevy Impala. Although his mother's black Chevy Impala had yellow air freshener's hanging from its rearview mirror, Mr. Miller argues that air fresheners are common. He argues that "overly emotional testimony" from Mother's daughters impacted the jury, as the State's case only consisted of "highly-speculative circumstantial evidence." As such, he claims the jury lost its way in convicting him.

{¶36} Having reviewed the record, we cannot conclude that the jury clearly lost its way and created a manifest miscarriage of justice when it found Mr. Miller guilty. *See Otten* at 340. First, the record belies his argument that testifying witnesses disagreed as to the make of the vehicle used in the homicide. While there was testimony that Mr. Miller sometimes drove a blue Chevy Equinox, no witnesses suggested that car was used during the homicide. Surveillance footage showed the shooter and an accomplice emerging from a dark sedan, and witnesses testified that the car resembled the black Chevy Impala that Mr. Miller drove. The State set forth several

pieces of evidence linking the Chevy Impala to the crime including the surveillance footage shown at trial, testimony about the car's bright yellow air fresheners, testimony about the inability of the police to locate the car for weeks, and testimony that Mr. Miller had the car's temporary tag in his pocket three days after the murder. While Mr. Miller claims that air fresheners are a common feature, the jury was in the best position to determine whether the distinctive color and amount of the air fresheners spotted in both the black Impala and the dark sedan captured on camera in an area nearby the shooting meant the cars were one in the same. Mr. Miller's convictions are not against the manifest weight of the evidence simply because the jury chose to believe the State's version of the events. *State v. Fry*, 2017-Ohio-9077, ¶ 13 (9th Dist.).

{¶37} Second, the record does not support Mr. Miller's claim that the evidence against him was highly speculative, and therefore, the jury must have convicted him based solely on "overly emotional testimony." We previously outlined the extensive amount of circumstantial evidence the State produced at trial. *See* Discussion of Assignment of Error One, *supra*. That evidence included surveillance footage, cell phone calls and text messages, and testimony about Mr. Miller's actions before and after the shooting. Those actions included restricting his cell phone usage during the murder, disposing of cell phones after the murder, removing the temporary tag from the car believed to be involved in the shooting, and running from the police when they tried to speak with him. *See McCormick*, 2019-Ohio-2204, at ¶ 19 (9th Dist.) (flight may be considered as consciousness of guilt). Mr. Miller has not shown that this is the exceptional case in which the evidence weighs heavily against his convictions. *See Otten* at 340. Accordingly, his second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT ERRED WHEN IT PERMITTED IREELEVANT (sic) VICTIM IMPACT TESTIMONY AND HEARSAY AGAINST [MR. MILLER],

> IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ARTICLE ONE, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION; AND RULES 401 *ET. SEQ.*, 602, AND 801 *ET. SEQ.* OF THE OHIO RULES OF EVIDENCE.

{¶38} In his third assignment of error, Mr. Miller argues that the trial court erred when it allowed the State to introduce irrelevant victim impact testimony and hearsay through Older Daughter, Younger Daughter, and a body camera recording that included statements from Younger Daughter. Mr. Miller acknowledges that his attorney did not object "to the majority of the testimony" he challenges, so he argues plain error. For the following reasons, we reject his argument.

{¶39} "[T]here are three parts to plain-error review: (1) there must be an error, (2) the error must be plain, and (3) the error must affect 'substantial rights.'" *State v. Bradley*, 2026-Ohio-3771, ¶ 15, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). For an error to be plain, it must be "a clear error under current law." *Bradley* at ¶ 17. *Accord Barnes* at 27 (defining "plain" error as an obvious defect in the proceedings). Regarding the substantial rights prong, a defendant must show that, but for the error, the outcome of the trial would have been different. *Bradley* at ¶ 29. "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1987), paragraph three of the syllabus. "Even if the three parts of plain-error review are satisfied . . . relief is left to the discretion of the reviewing court." *Bradley* at ¶ 15.

Older Daughter

{¶40} Mr. Miller claims that the majority of Older Daughter's testimony amounted to victim-impact testimony. He notes that she was permitted to testify about Mother's employment, her relationship with her family, and other information that did not bear directly upon his charges. He claims that Older Daughter's testimony was offered to bolster Younger Daughter's testimony

about the toxicity of the relationship between him and Younger Daughter. He notes that Older Daughter lived out of state, and therefore, had no first-hand knowledge about his relationship with Younger Daughter or the events of the shooting. Nevertheless, Older Daughter was allowed to testify that he negatively impacted her sister and that a cousin told her he had shot Mother. Mr. Miller argues that Older Daughter's testimony amounted to hearsay. He claims that its admission prejudiced him because, had she not bolstered Younger Daughter's testimony, he would not have been convicted.

{¶41} The record reflects that Older Daughter offered limited testimony about Mother as a person. She answered a few questions about how long Mother had lived at her residence, how many relatives she had, what type of relationship she had with them, and her hobbies. Older Daughter testified about Mother's work schedule because her schedule was tied to her habit of not leaving the house at night. She did not talk about the impact Mother's death had on her personally or on any members of their family.

{¶42} When determining whether a trial court has erred by admitting "overly emotional" victim-impact testimony, a reviewing court should consider

> (1) "the length of the victim-impact testimony," (2) "whether witnesses, jurors, and audience members showed physical signs of emotion during the testimony," (3) "the detail and depth of the victim-impact testimony with regard to the murder victim[s]," and (4) "whether the victim-impact witness used emotionally charged language."

State v. Nicholson, 2024-Ohio-604, ¶ 194, quoting *State v. Graham*, 2020-Ohio-6700, ¶ 126. Although Mr. Miller acknowledges the foregoing standard, he has made no attempt to apply it in this instance. This Court will not undertake that analysis on his behalf. *See* App.R. 16(A)(7); *Cardone v. Cardone*, 1998 WL 224934, *8 (9th Dist. May 6, 1998). Mr. Miller's general claim that Older Daughter offered overly emotional victim-impact testimony is insufficient to carry his

burden to show that its admission amounted "to clear error under current law." *See Bradley*, 2026-Ohio-3771, at ¶ 17. Nor has he shown that the admission of Older Daughter's other testimony prejudiced him.

{¶43} To the extent Older Daughter testified about the toxic relationship between Younger Daughter and Mr. Miller, other witnesses testified to that effect. Younger Daughter testified about her relationship with Mr. Miller, and both officers and Mother's neighbor indicated that the police had been called to Mother's house to address disputes between Younger Daughter and Mr. Miller. The State also produced Mr. Miller's text messages to Younger Daughter. The jury, therefore, had other evidence before it to establish the nature of Younger Daughter's relationship with Mr. Miller.

{¶44} To the extent Older Daughter testified that a cousin told her Mr. Miller had shot Mother, the jury heard an overwhelming amount of circumstantial evidence linking him to the murder. We have already outlined that evidence in detail in addressing Mr. Miller's sufficiency argument. *See* Discussion of Assignment of Error One, *supra*. Mr. Miller has not shown that, but for the Older Daughter's statements about her cousin's accusation or Mr. Miller's toxic relationship with Younger Daughter, the result of his trial would have been different. *See Bradley* at ¶ 29. Accordingly, we reject his argument that the admission of Older Daughter's testimony resulted in plain error.

Younger Daughter

{¶45} Mr. Miller argues that that Younger Daughter was permitted to offer testimony that amounted to hearsay and speculation. Much of his argument focuses on a body camera recording the trial court allowed the State to play at trial. The recording was from the first officer to arrive on scene after the murder. As the police began investigating, Younger Daughter arrived home.

The recording captured her reaction to the scene and included statements in which she accused Mr. Miller of committing the murder. While testifying at trial, Younger Daughter also shared her belief that Mr. Miller had killed her Mother. Mr. Miller argues that Younger Daughter had no direct evidence of his involvement, so her testimony amounted to speculation. He also argues that Younger Daughter had no evidence to support her claim that he damaged her car or drove to Mother's vigil. Because significant portions of her testimony were not based on personal knowledge and its overly emotional nature influenced the jury, Mr. Miller argues, the trial court committed plain error by admitting Younger Daughter's statements.

{¶46} This Court notes that, when the State sought to introduce the body camera recording with Younger Daughter's statements, defense counsel objected to its admission. The trial court heard arguments and found that her recorded statements were admissible as excited utterances. Mr. Miller has not specifically addressed the trial court's ruling in that regard. While he acknowledges the excited utterance exception, he only asserts that "'[m]erely being 'upset' clearly does not meet the standard for admission' under Evidence Rule 803(2) . . . ." Appellant's Brief at 31, quoting *State v. Taylor*, 66 Ohio St.3d 295, 303 (1993).

{¶47} The record does not support Mr. Miller's argument that Younger Daughter was merely upset when she made the statements captured on a responding officer's body camera. The recording captured her screaming as she had just arrived on scene shortly after the murder occurred and learned that Mother had been killed. She was under significant stress at that time, caused by Mother's murder, and her statements related to that event. Based on those circumstances, we cannot conclude that the trial court erred by admitting her recorded statements. *See State v. Herring*, 2023-Ohio-4851, ¶ 36 (9th Dist.), quoting Evid.R. 803(2) ("Trial courts may admit out-

of-court declarations as excited utterances if they relate 'to a startling event or condition' and were 'made while the declarant was under the stress of excitement caused by the event or condition.'").

{¶48} To the extent Mr. Miller argues that Younger Daughter only speculated about his having tampered with her car, Younger Daughter took pictures of the damage to her car. The State introduced those pictures at trial. The State also introduced text messages from Mr. Miller. Mr. Miller sent several of those messages before he arrived at Mother's house. In one of the messages, he wrote: "Bout take my part off that car." In others he wrote: (1) "Yo mom filin police report cause I took my parts wtf", and (2) "I'm missing a part let me come grab it snitch b*tch[.]" Younger Daughter also testified that she had to have her father fix her car due to Mr. Miller's actions. The record does not support Mr. Miller's claim that Younger Daughter's testimony about the car and the damage he caused was speculative. The truth of her statements was an issue of credibility for the jury, not a matter of speculation. The same is true regarding her statements about seeing him at Mother's vigil. It was Younger Daughter's testimony that she saw the blue Chevy Equinox Mr. Miller drove at the vigil. Mr. Miller's arguments about her testimony speak to its weight rather than its admissibility. *See State v. Andrews*, 2020-Ohio-2703, ¶ 38 (9th Dist.). Because he has not shown that the court's admission of her statements amounted "to clear error under current law," we reject his argument that plain error occurred. *See Bradley*, 2026-Ohio-3771, at ¶ 17. Mr. Miller's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> [MR. MILLER] WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, IN VIOLATION OF STRICKLAND V. WASHINGTON, THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND ARTICLE ONE, SECTION TEN OF THE OHIO CONSTITUTION.

{¶49} In his fourth assignment of error, Mr. Miller argues that he received ineffective assistance of counsel. We do not agree.

{¶50} "To establish ineffective assistance, [Mr. Miller] must show that the performance of defense counsel was deficient and that he was prejudiced as a result." *State v. Brinkman*, 2026-Ohio-3190, ¶ 219. *Accord Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). A deficient performance is one "falling below an objective standard of reasonable representation . . . ." *State v. Mundt*, 2007-Ohio-4836, ¶ 62. Prejudice exists if there is "a reasonable probability that[,] but for counsel's errors, the proceeding's result would have been different. *Id.* "Both the deficient-performance and prejudice prongs must be met for a successful ineffective-assistance claim; neither is individually sufficient." *State v. Rogers*, 2025-Ohio-4794, ¶ 25.

{¶51} Mr. Miller argues that he received ineffective assistance of counsel because his attorney did not object to the "truckload of speculative, inadmissible evidence" against him. He once again argues that Older Daughter and Younger Daughter offered testimony that was speculative, based on hearsay, and amounted to improper victim-impact evidence. According to Mr. Miller, he would not have been convicted without the introduction of testimony that painted him as a "controlling, manipulative criminal" because "[t]here were too many holes in the case and a lack of evidence actually tying [him] to the crime." He also asserts that there was a question of a conflict of interest because his attorney appeared to have consulted with Younger Daughter regarding her criminal case. For the foregoing reasons, Mr. Miller argues that he is entitled to have his convictions reversed.

{¶52} "'[A]s a matter of law, the failure to object to an error at trial may be justified as a trial tactic and thus does not sustain a claim of ineffective assistance of counsel.'" (Alteration in original.) *State v. Coleman*, 2026-Ohio-1701, ¶ 29 (9th Dist.), quoting *State v. Granakis*, 2017-

Ohio-8428, ¶ 29 (9th Dist.). "'Strategic trial decisions are left to the deference of trial counsel and are not to be second-guessed by appellate courts.'" *Granakis* at ¶ 29 (9th Dist.), quoting *State v. Miller*, 2007-Ohio-370, ¶ 10 (9th Dist.).

{¶53} We have already concluded that clear error did not result from the admission of the majority of Older Daughter and Younger Daughter's statements. *See* Discussion of Assignment of Error Three, *supra*. Trial counsel may well have determined that it was inadvisable to object to those statements because they would likely be found admissible and any objection would simply draw more attention to them. *See State v. Gilbert*, 2025-Ohio-4623, ¶ 51 (9th Dist.). The record reflects that defense counsel focused his efforts on discrediting the State's theory that the dark sedan spotted in the security footage was the Chevy Impala that Mr. Miller drove. Given the wealth of circumstantial evidence against Mr. Miller, we will not second-guess defense counsel's strategic decision to focus on that aspect of the State's case. *See Granakis* at ¶ 29, quoting *Miller* at ¶ 10.

{¶54} To the extent Mr. Miller suggests that defense counsel may have had a conflict of interest, the record reflects that defense counsel raised the issue himself when cross-examining Younger Daughter. The following exchange occurred:

> [DEFENSE COUNSEL]: We've met before?
>
> [YOUNGER DAUGHTER]: Yes.
>
> [DEFENSE COUNSEL]: Okay. As a matter of fact, when – when the original drug case happened, you wanted me to be your attorney?
>
> [YOUNGER DAUGHTER]: Yes.
>
> [DEFENSE COUNSEL]: At that time, I told you I couldn't be your attorney?
>
> [YOUNGER DAUGHTER]: Yes.
>
> [DEFENSE COUNSEL]: And you understand eventually that I wasn't [Mr. Miller's] attorney either?

> [YOUNGER DAUGHTER]: Yes.
>
> [DEFENSE COUNSEL]: We got you [a different attorney] to be your attorney; is that correct?
>
> [YOUNGER DAUGHTER]: Yes.

There was no indication that defense counsel had any other involvement in Younger Daughter's case.

{¶55} Regarding one's right to effective assistance of counsel, the Sixth Amendment "is violated by an actual conflict of interest, not a possible one." *State v. Gillard*, 78 Ohio St.3d 548, 552 (1997).

> To demonstrate an actual conflict of interest based upon what an attorney has failed to do, [an] appellant must show two elements. First, he must demonstrate that "some plausible alternative defense strategy or tactic might have been pursued. He need not show that the alternative defense would necessarily have been successful if it had been used, but that it possessed sufficient substance to be a viable alternative. Second, he must establish that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests."

Id. at 553, quoting *U.S. v. Fahey*, 769 F.2d 829, 836 (1st Cir. 1985).

{¶56} Mr. Miller has made no attempt to establish the existence of an actual conflict of interest in this case. This Court will not construct an analysis on his behalf. *See* App.R. 16(A)(7); *Cardone*, 1998 WL 224934, at *8 (9th Dist.). Upon review, Mr. Miller has not shown that he received ineffective assistance of counsel. Accordingly, his fourth assignment of error is overruled.

III.

{¶57} Mr. Miller's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

NATHAN MANNING
FOR THE COURT

HENSAL, P. J.
FLAGG LANZINGER, J.
CONCUR.

APPEARANCES:

ADAM VANHO, Attorney at Law, for Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellee.