[Cite as *State v. Shirilla*, 2024-Ohio-4674.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113167
v.	:	
MACKENZIE F. SHIRILLA,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 26, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-679612-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Tim Troup and Allison McGrath, Assistant Prosecuting Attorneys, *for appellee*.

Friedman, Nemecek & Long, L.L.C. and Eric C. Nemecek, *for appellant*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Defendant-appellant, Mackenzie F. Shirilla, appeals her convictions for multiple counts of murder, felonious assault and aggravated vehicular homicide as

well as drug possession and possessing criminal tools. For the reasons that follow, we affirm.

{¶ 2} A delinquency complaint was filed in the Cuyahoga County Juvenile Court which alleged that the appellant has committed offenses of aggravated murder, murder, felonious assault, aggravated vehicular homicide, drug possession and possessing criminal tools. The juvenile court held a hearing to determine whether the case should be transferred to the Cuyahoga County Common Pleas Court, General Division, for criminal prosecution. At the hearing, the State introduced evidence to support transfer. To assist with readability, we do not summarize the same evidence twice in this opinion but rather discuss the salient disagreements between the defense and the State in our discussion of Shirilla's first assignment of error below.

{¶ 3} The juvenile court found that the State failed to establish probable cause that Shirilla committed aggravated murder but did find probable cause was established as to the remaining charges and transferred the case to the general division.

{¶ 4} A Cuyahoga County Grand Jury returned a 12-count indictment charging Shirilla with four counts of murder, four counts of felonious assault, two counts of aggravated vehicular homicide, drug possession and possession of criminal tools. The crimes were alleged to have caused the deaths of Dominic Russo and Davion Flanagan.

{¶ 5} Appellant waived her right to a trial by jury and she elected to have the charges tried to the bench.

{¶ 6} The trial court completed a judge view, visiting several locations along the route traveled by Shirilla, Russo and Flanagan on July 31, 2022.

{¶ 7} The parties stipulated that the defendant is the person who was driving the car at the time of the crash.

{¶ 8} Michael Galassi testified that he is employed as a police patrol officer with the Strongsville Police Department. On July 31, 2022, Strongsville police received a 9-1-1 call reporting that a vehicle had crashed into a building near the intersection of Progress Drive and Alameda Drive in Cuyahoga County. Galassi responded to the scene and he testified that he observed a black car crashed into a building and the car looked "like it's cut in half." There was "[h]eavy front-end damage" and appeared that "it's cut down the middle." Galassi related to dispatch that the situation was "pretty severe."

{¶ 9} Galassi ran to the driver's side and saw "the legs and lower torso of what appeared to be a female." The upper half of the driver's body "was on the passenger side underneath the passenger dashboard caved in on top of her."

{¶ 10} Galassi ran to the passenger side next, where he observed that a passenger — later identified as Flanagan — "was on top of the passenger seat with his back on top of the passenger seat and his head facing the top of the car." Flanagan appeared to be deceased as he did not seem to breathing and had "severe head trauma." Galassi continued searching the vehicle and discovered a third

occupant. Galassi related that the passenger seat "was reclined all the way" and the third occupant was in the passenger seat with Flanagan lying on top of him. The third occupant (Russo) also had severe head trauma.

{¶ 11} Based on his initial assessment of the crash, Galassi believed that all three occupants were dead at the scene. As officers broke a window and began cutting the airbags, however, they heard "mumbling" and determined that the driver was still alive.

{¶ 12} The Strongsville Fire Department arrived on scene and used tools to extract Flanagan, then Shirilla and finally Russo. Shirilla had "significant injuries" to her leg and arm. One of the first things she said was "How is Davion"?

{¶ 13} Emergency personnel called for two air ambulances, one each for Shirilla and Flanagan, who was determined to still be alive as well. Unfortunately, Flanagan died on the scene before the helicopter arrived.

{¶ 14} Galassi went to the hospital where medical personnel had taken Shirilla. He learned that alcohol testing had been conducted and Shirilla had not been under the influence of alcohol at the time of the crash.

{¶ 15} Galassi then returned to the scene to collect evidence. Officers collected "8.1 grams of mushrooms," a digital scale, two cell phones, a bong, a bag of marijuana, a purse and a Cadillac key fob.

{¶ 16} On cross-examination, Galassi admitted that Progress Drive is a "cut-through" street with a speed limit of 35 m.p.h. He admitted that drivers use

Progress Drive "as a cut-through" to get from Pearl Road to State Route 82 (Royalton Road), and they often exceed the speed limit travelling on that route.

{¶ 17} Brent Robinson testified that he is employed as a patrol officer with the Strongsville Police Department and has driven through the area of the crash hundreds of times. He described the area as a commercial area and described the route as follows:

> It's a concrete-paved road. It's one of our older paved roads in the city, I would say, and it's got some wear and tear to it. You can tell there is certain sections of the concrete that are raised so it is a little bit difficult driving, I would say, like the speed limit, down the road. You can feel the bumps as you are driving in your cruiser.
>
> When you drive onto Progress Drive from Pearl Road it goes from east to west, and there is a series of curves that you will experience in the roadway. Once you get to the end of Progress, it's a T-intersection.

{¶ 18} Robinson responded to the crash scene. The prosecution played recordings captured by cameras inside his patrol car, facing out through the front and rear windshields. The camera recorded Robinson driving at a maximum speed of 54 m.p.h. and he stated that he felt this was as fast as he could safely drive on that road. It is a "rough road," so even at that speed he "had to hold onto the steering wheel to make sure that I was in control."

{¶ 19} Robinson assisted with breaking windows and cutting airbags in the crashed vehicle. Russo and Flanagan appeared to be deceased at the scene. Shirilla was "stuck underneath the dash[board] facing down in her lap."

{¶ 20} On cross-examination, Robinson admitted that Shirilla was "unresponsive" when he arrived on scene.

{¶ 21} Brett Stanislaw testified that he is employed as a firefighter, paramedic and captain with the Berea Fire Department. He and other paramedics from Berea responded to the crash scene in Strongsville to assist Strongsville personnel because there were three persons needing assistance. The call for aid came to them just before 6:30 a.m. on July 31, 2022. Strongsville personnel asked the Berea paramedics to provide aid to the driver of the vehicle who was being extricated when Berea personnel arrived.

{¶ 22} Stanislaw assessed Shirilla when she was extricated. Her eyes were closed when the assessment began. After paramedics began asking her questions, Shirilla gave "delayed" verbal responses back to them. Shirilla was confused but alert. She was not oriented to event or place. Stanislaw said that "[s]he was confused as to what the events were." But her "pulse, motor, and sensation in her four extremities" were normal, which he said ruled out a stroke, seizure or other significant neurological emergency. Shirilla had several broken bones and her blood pressure was elevated on scene. Her blood-oxygen level was 82, when a normal level is 95 or above. Her heart was determined to be in sinus (normal) rhythm with a normal heart rate.

{¶ 23} During the medical assessment, Stanislaw found a "baggie" in Shirilla's shirt which contained "mushrooms." He also found a plastic case and he handed both those items to a police officer.

{¶ 24} On cross-examination, Stanislaw admitted that a person could have a seizure before medical personnel arrived and "there would be no signs of it" during

the medical evaluation. His assessment of Shirilla was limited to his observations at that moment in time when she was in the ambulance. Stanislaw further admitted that a blood-oxygen level of 82 is "extremely low"; normally a level that low indicates that a person "just went into cardiac arrest or just came back out of cardiac arrest." That level could also be seen in a person with chronic obstructive pulmonary disorder or another respiratory ailment but it could also be the result of a misplaced measurement device or cold fingers. Stanislaw testified that during the assessment, Shirilla was confused, her eyes were closed, she had fractured bones, she was in pain and she said she did not know what happened.

{¶ 25} Steven Vanek testified that he is employed as a police detective with the Strongsville Police Department and was assigned to assist in the crash investigation.

{¶ 26} Shirilla's vehicle had crashed into the brick wall of a manufacturing facility operated by the PLIDCO company. Vanek spoke with the president of the company that operated that facility and took photographs of the scene. He collected pieces of the vehicle from the scene and, after obtaining a search warrant, searched the car involved in the crash. Vanek also collected surveillance video from businesses located near the crash site. Finally, he used a drone to capture video of the crash site area. Vanek authenticated the photographs and drone video he took as well as the surveillance videos he collected.

{¶ 27} On cross-examination, Vanek admitted that there is a fairly sharp turn at the intersection of Progress Drive and Alameda Drive. There is a stop sign at the

intersection but, because of tree cover, a driver does not necessarily see the stop sign until only a "short distance" before the intersection.

{¶ 28} Christopher Martin testified that he is 42 years old and a friend of Dominic Russo's family. Martin testified about an incident that occurred in July 2022, before the crash.

{¶ 29} On a day that July, Martin was sitting with Dominic's mother, Christine Russo, when Dominic called Christine. Dominic "seemed upset." Christine grew upset and Martin agreed to drive to "go get him out of the situation that could have been a bad situation." Martin called Dominic on the way in order to obtain his exact location and ultimately located the vehicle which Shirilla was driving and in which Dominic was a passenger, on the shoulder of Interstate 71.

{¶ 30} Martin was on the phone with Dominic at the time. As both cars were pulling over, Martin heard Dominic and Shirilla arguing. During the course of the argument, Shirilla said, "I'm going to wreck this car right now." Dominic moved to exit the vehicle when it came to a stop. Martin testified that he saw a "tussle" inside the car, with Shirilla "swinging her hands at him."

{¶ 31} Dominic exited Shirilla's car, entered Martin's car and Martin drove Dominic back to the Russo home. Dominic was "upset."

{¶ 32} On cross-examination, Martin admitted that Christine Russo owns two houses next door to each other. Christine lives in one house with two of her sons and, in July 2022, Dominic was living in the other house with Shirilla. Martin further admitted that he did not report the incident on the highway to the police.

{¶ 33} Christine Russo testified that she is Dominic Russo's mother and that Dominic was 20 years old when he was killed. Christine owned two houses next door to each other in Strongsville. At the time of the crash, she lived in one and Dominic lived in the other.

{¶ 34} According to Christine Russo, Dominic and Shirilla had met in school and had been dating for approximately four years at the time of the crash. Christine considered Shirilla to be part of her family and they spent a lot of time together over the years. Shirilla moved in with Dominic in December 2021 or January 2022.

{¶ 35} In the six months before the crash, Christine observed that the relationship between Dominic and Shirilla became "strained." She observed "fighting," "[a]rguments," "[d]isagreements," "[b]reakups" and "[t]hreats." She reported that Shirilla became "more possessive" of Dominic.

{¶ 36} There came a time in August or September 2022 that Christine and Shirilla were together at Dominic's grave. Christine asked Shirilla why they did not ask for a ride on the day of the crash. Shirilla responded that they were "not f***** up."

{¶ 37} Shirilla and Christine also communicated by text message about the accident. Shirilla texted Christine the following:

> I remember turning onto the street, and then my vision fades to black. It really kills me not to be able to remember anything. I promise you I would tell you. I've been asking my therapist why I don't remember, and she said it's because of trauma. I'm gonna try to get myself hypnotized and make myself remember.

{¶ 38} Christine confirmed the incident on July 17, 2022, where Dominic called Christine and needed to be picked up immediately, that Christine asked Christopher Martin to pick Dominic up and the two returned to her house approximately a half hour later and that Dominic was "upset" when he returned.

{¶ 39} After Dominic died, Christine Russo was provided with three videos of Shirilla and Dominic on a phone that had been inside of Dominic's house which she provided to the police. Christine testified that the videos had been made in July 2022, after the incident on the highway, based upon the content of the conversations between Shirilla and Dominic and had been recorded on a phone owned by William Ellis. The phone had been in Dominic's home and was returned to Ellis who then discovered the video recordings.

{¶ 40} The court allowed the videos to be played, over defense objection that they were inadmissible under Evid.R. 404(B). In the videos, Shirilla can be heard threatening Dominic, threatening to break into his house.

{¶ 41} Paul Burlinghaus testified that he is 19 years old and has known Shirilla since they were in middle school together. He knew Dominic Russo through Shirilla and knew Davion Flanagan through mutual friends.

{¶ 42} Burlinghaus testified that at approximately 11:00 p.m. on the evening of July 30, 2022, Russo, Flanagan, Shirilla and other friends came to Burlinghaus' house to "hang out." They listened to music and a few of them smoked marijuana. Burlinghaus did not smoke and he did not believe that Shirilla did, either. The tone of the get-together was "quite chill," "like just a normal sleepover." No one drank

alcohol or used any other drugs. Burlinghaus went to sleep sometime after midnight and woke around 3:00 or 4:00 a.m., at which time Shirilla was asleep on the couch, Flanagan was watching a television program with another one of their friends but Burlinghaus did not see Russo at that time.

{¶ 43} Burlinghaus went back to sleep and when he arose later in the morning, all his guests were gone. One of his friends texted him to tell him about the crash, "and I couldn't believe it."

{¶ 44} On cross-examination, Burlinghaus admitted that he did not see Shirilla and Dominic fighting at the get-together; "[e]verything seemed fine" between them.

{¶ 45} Tyler Croy testified that he is 19 years old. He knew Shirilla because they were classmates in high school and he knew Dominic Russo through mutual friends. Croy and Davion Flanagan were "pretty good friends" throughout high school and after they graduated.

{¶ 46} Croy and Flanagan were connected on the social-media applications Life360 and Snapchat. Life360 is an application that tracks users' location through their mobile phones and makes location information available to approved connections. Snapchat allowed the two to exchange photographs and electronic messages.

{¶ 47} Croy was out of state on July 30 and 31, 2022, but he communicated with Flanagan over Snapchat in the early morning hours of July 31. When Croy heard that Flanagan had been involved in a car crash, Croy took a screenshot of

Flanagan's location data as recorded by Life360 and provided that information to police.

{¶ 48} The location data showed that Flanagan was at a home on Brushwood Lane in Strongsville from 11:39 p.m. to 5:30 a.m. The application recorded that Flanagan was traveling from 5:30 a.m. till 5:36 a.m., at which point "they crashed." The application recorded Flanagan was moving at 90 miles per hour.

{¶ 49} On cross-examination, Croy admitted that his understanding of the Life360 data is simply from being a user; he is not employed by the application and is not an expert on it. Croy also admitted that, while the application records phone usage, it does not document who in particular used Flanagan's phone.

{¶ 50} Kellie Vraja testified that she is 19 years old. She met Shirilla through mutual friends in 2020 and the two became friends, themselves.

{¶ 51} On July 30, 2022, Vraja hosted a graduation party. The party was "laid back," with friends hanging around by a fire and playing some games. Shirilla drove to the party at around 10:15 or 10:30 p.m. with Russo and Flanagan. Vraja welcomed them and Shirilla asked Vraja "if I trip" and Vraja responded that she did not. The three guests had brought a bottle of tequila and a "weed pen" with them and she saw Flanagan holding the "weed pen." Shirilla, Russo and Flanagan "were debating on going to somebody's house or they were debating on tripping that night."

{¶ 52} Shirilla, Russo and Flanagan stayed at the party approximately 25 or 30 minutes during which time Vraja did not see any of them using drugs or drinking alcohol and they left.

{¶ 53} Angelo Russo testified that he is 24 years old and is Dominic Russo's brother. Russo met Shirilla when she and Dominic began dating and that Shirilla was over Angelo's house "a lot."

{¶ 54} According to Angelo Russo, Shirilla and Dominic had "broken up many times" over the years and in June and July 2022 Dominic was considering ending the relationship for good.

{¶ 55} Shirilla sent Angelo a few text messages after the crash which Angelo provided to the police. In an August 6, 2022 text, Shirilla asked Angelo "would you be able to go in Dom's room and grab some photos from his desk of me and him so I could put them into the casket so he can be with me forever." Shirilla sent him another message later that month in which she apologized for the crash and said, "I know you probably think this is all my fault . . . I wish that he was here, too. This should have never happened. . . . I really do feel bad. It's killing me."

{¶ 56} Adam McQuaid testified that he is employed as a sergeant with the Brooklyn Police Department. He is a member of a regional crash team that analyzes and reconstructs traffic crashes in the area. The parties stipulated that McQuaid is an expert in accident reconstruction and forensic event data recorder analysis.

{¶ 57} The Strongsville Police Department requested McQuaid to review data taken from the event data recorder in the Toyota Camry involved in this crash.

{¶ 58} From his analysis of the data recorder, McQuaid concluded that the vehicle's accelerator pedal was fully depressed 4.6 seconds before the crash. The engine throttle was also at a hundred percent until 1.6 seconds before the crash, when the vehicle went airborne as it went over a curb.

{¶ 59} Within 4.5 seconds of the start of the crash, the vehicle registered a small right turn, then a small left turn followed by a "significant right-hand turn" that caused the data recorder to note a "rollover event," meaning that there was enough lateral force on the car that the data recorder thought it was turning over. He explained that the car was traveling very fast and then there was a "hard yank" of the steering wheel, turning the wheel 142 degrees.

{¶ 60} The car registered a small change in velocity as it hit the curb and then a large change in velocity as the vehicle hit the wall. The vehicle hit the wall 1.1 seconds after the hard-steering event.

{¶ 61} At no point in the 4.6 seconds before the crash was the brake pressed.

{¶ 62} On cross-examination, McQuaid admitted that the data does not show what caused the steering wheel to take a hard-right turn. He further admitted that the side airbags deployed approximately 30 milliseconds after the hard-steering event. He further admitted that it is accepted in his field that it takes a person 1.5 seconds to react to something they have perceived. The data available from the computer was limited to the last 4.75 seconds before the vehicle hit the wall.

{¶ 63} Esther Tseng testified that she is employed as a trauma surgeon at MetroHealth Medical Center. The parties stipulated that Dr. Tseng is an expert in the field of trauma medicine.

{¶ 64} Shirilla was examined on July 31, 2022, after the crash. According to medical records, Shirilla reported pain "everywhere." An exam determined that her airway was intact, her breathing and circulation were normal and her pupils were reacting normally. She was alert and oriented.

{¶ 65} A physical exam revealed that Shirilla's right elbow and right knee appeared abnormal and there was a two-centimeter laceration to the left knee.

{¶ 66} Shirilla's mother informed medical personnel that Shirilla had a history of postural orthostatic tachycardia syndrome ("POTS"), which can cause a patient to have an unusually elevated heart rate.

{¶ 67} According to medical records, Shirilla denied drug use when asked by medical personnel and a blood alcohol test reflected "not detected."

{¶ 68} Medical personnel did not note any cardiovascular, neurologic, joint or muscle symptoms. No symptoms related to sleep disturbances, anxiety, memory loss, disorientation, inattention or depression were noted and an electrocardiogram which was performed revealed that the electrical function of Shirilla's heart was normal.

{¶ 69} A medical record does note that Shirilla reported feeling depressed and felt grief, guilt and shame. She said she "wanted to die" and expressed that it was "her fault for killing her boyfriend."

{¶ 70} On cross-examination, Dr. Tseng admitted that a blood-oxygen level of 82 would be abnormally low for most people. Dr. Tseng further admitted that a patient with POTS may experience dizziness or a headache. Medical personnel evaluated Shirilla approximately two hours after the reported time of the crash. A person who has suffered a seizure or a "mini-stroke" could possibly have recovered within two hours.

{¶ 71} Michelle Ruminski testified that she is employed as an investigator with the Ohio Bureau of Motor Vehicles, Investigation Section.

{¶ 72} BMV records indicated that, when applying for a temporary driver's license after the accident in 2022, Shirilla attested that she did not have "any condition that results in episodic impairment of consciousness or loss of muscular control." She further attested that she does not have "a physical or mental condition that prevents [her] from exercising reasonable and ordinary control of a motor vehicle." Shirilla received a driver's license on October 21, 2022.

{¶ 73} Shirilla had made the same attestations to obtain her previous license which was issued in April 2021.

{¶ 74} Mark Sargent testified that he is employed by a consulting firm known as Fire and Explosion Consultants, where he conducts mechanical defect analysis on automobiles. The parties stipulated that he is an expert forensic mechanical expert. He was contacted by Strongsville police to evaluate the Toyota Camry driven by Shirilla to determine if there were any mechanical failures that may have caused, or contributed to, the crash.

{¶ 75} Sargent inspected the vehicle on August 30, 2022. There had been a recall for the vehicle, but Sargent confirmed that the issue had been adequately repaired by Toyota on this particular vehicle.

{¶ 76} Sargent thoroughly examined the vehicle including, but not limited to, the accelerator pedal, throttle mechanics and brakes. He found no indication of any precrash mechanical or electrical failure that may have caused a loss of accelerator control, a loss of braking or a loss in the ability to steer the vehicle.

{¶ 77} Sargent noted that vehicle components were partially "buckled over" the accelerator pedal, which, combined with information that a slipper was found trapped underneath the rolled-over component, caused him to conclude that the driver's foot was on the accelerator when the crash occurred. And, because of the location of the slipper on the pedal, the slipper could not have been caught in such a way that it caused unintended acceleration prior to the crash.

{¶ 78} Sargent testified that he did not see any indication that the brakes had been applied for a long period of time in an attempt to stop the vehicle before the crash. The brakes appeared functional.

{¶ 79} Sargent researched the mechanical specifications of the vehicle. It was capable of going from 0 m.p.h. to 60 m.p.h. in 7.5 seconds. It could go from 0 m.p.h. to 102.5 m.p.h. in 26.5 seconds. Its maximum speed was 129 m.p.h.

{¶ 80} On cross-examination, Sargent admitted that the data recorder from the vehicle showed that both front seatbelts were engaged. The data also showed that the gearshift was shifted back and forth between drive, sequential and neutral

in the 4.7 seconds before the crash; the gearshift has to be manually moved. Sargent calculated that this vehicle could go from 50 m.p.h. to 100 m.p.h. in approximately 19 seconds. In 17 seconds it could go from 60 m.p.h. to 100 m.p.h.

{¶ 81} Sargent further admitted that a hard-right turn could be consistent with a driver attempting to maintain or get control of the vehicle. It could also be consistent with a passenger pulling onto the wheel trying to avoid a collision. It could also have been a physical reaction caused by the impact of the vehicle hitting the ground after becoming airborne.

{¶ 82} It is possible that a driver attempting to brake may accidentally hit the accelerator. But he said that normally in that situation he would expect to see a data recorder capture that the accelerator go from a hundred percent to zero at some point.

{¶ 83} On redirect, Sargent could not recall ever investigating a crash in which the data recorded a one-hundred-percent accelerator application throughout the entire duration of the incident with no brake application.

{¶ 84} On recross-examination, Sargent testified that the hard-right turn happened nearly simultaneously with the vehicle hitting the curb.

{¶ 85} Joseph Felo testified that he is a medical doctor employed as a forensic pathologist and chief deputy medical examiner by the Cuyahoga County Medical Examiner's Office. The parties stipulated that Dr. Felo is an expert in the field of forensic pathology and the court accepted him as an expert.

{¶ 86} The medical examiner's office concluded, after its examination, that Flanagan and Russo each died from multiple blunt force injuries consistent with an automobile crash. Flanagan's lethal injuries were to his trunk and abdomen; Russo's lethal injuries were to his head. Toxicology testing showed that Flanagan and Russo had both used marijuana before their deaths. The manner of these deaths was initially classified as an accident, based on a report from the Strongsville Police Department indicating that the death was being investigated as a traffic accident.

{¶ 87} In March 2023, the prosecution submitted additional evidence to the medical examiner's office and requested a reconsideration of the manner of death for the victims. The additional evidence consisted of "transcripts from cell phones," still photographs, "video images" and interviews with various witnesses. Based on that additional information, Dr. Felo amended the autopsy report for the victims, changing the cause of death from an accident to a homicide. The report indicates that the investigation revealed "the driver's intention of inflicting self harm and harm unto the passengers in her vehicle."

{¶ 88} On cross-examination, Dr. Felo admitted that the manner of death was changed for each of the victims based in part on evidence that Shirilla intended to kill herself.

{¶ 89} Elliot Rawson testified that he is employed with the Ohio State Highway Patrol in the Crash Reconstruction Unit. The parties stipulated that he is an expert in crash reconstruction. Rawson completed a time-distance analysis in relation to this crash.

{¶ 90} Rawson visited the scene of the crash and used forensic mapping/surveying tools to take relevant measurements. He reviewed the surveillance video of the crash and analyzed it.

{¶ 91} He concluded that the vehicle was traveling at an average of 88.86 m.p.h. over the two seconds leading up to the crash. It was traveling approximately 97 m.p.h. before leaving the roadway. He concluded that the vehicle was gaining speed before leaving the roadway. From when it left the roadway to when it crashed into the building, it was traveling at approximately 80.5 m.p.h.

{¶ 92} Zaki Hazou testified that he is employed as a detective with the Strongsville Police Department. Hazou obtained surveillance video from city-owned cameras for the date of the crash. Hazou described that the video recorded the Camry "approaching Progress from southbound Pearl Road" before "making a controlled turn from southbound Pearl onto westbound Progress Drive."

{¶ 93} Hazou submitted the suspected mushrooms recovered from Shirilla by medical personnel to a laboratory for testing. The laboratory confirmed that the substance weighed 6.91 grams and was 95 percent psilocybin.

{¶ 94} Hazou interviewed Shirilla in the hospital, during which she made a statement — either to him or to her mother in his direction — "about '[t]ake my license away for ten years.'"

{¶ 95} GPS data from Shirilla's phone recorded that Shirilla's phone was located in the area of Progress and Alameda on July 28, 2022.

{¶ 96} On cross-examination, Hazou admitted that a location ping from a cellphone gives a general location, not with pinpoint accuracy. He further admitted that Shirilla was under the influence of marijuana at above the per-se level at the time of the crash.

{¶ 97} Hazou reviewed Shirilla's social-media history and documented over a hundred instances of what he would characterize as distracted or reckless driving.

{¶ 98} On redirect, Hazou testified that he did not believe that Shirilla was impaired by marijuana when she was driving. He noted that the investigation revealed that she was a habitual marijuana smoker and that she smoked marijuana while driving.

{¶ 99} After the State rested its case, the defense moved for a judgment of acquittal pursuant to Crim.R. 29. The court denied the motion.

{¶ 100} The defense then called witnesses in its case.

{¶ 101} Allison Groleau testified that she owns an organic produce market in Strongsville and that Shirilla was a regular shopper in her store. She would often come to the store with Russo and they were together in Groleau's store two or three times a week.

{¶ 102} In the many times that Groleau saw Shirilla and Russo together, they appeared to be very loving toward each other. They held hands or had their arms around each other and "you could tell they were very much in love."

{¶ 103} Candace Shipley testified that she is Shirilla's aunt. Two days before the crash, Shirilla and Russo came to Shipley's house and stayed for about three

hours. During that entire time, Shipley saw no signs of discontent or unhappiness between them. They were "very much in love" and spoke of future plans together.

{¶ 104} Natalie Shirilla ("Natalie") testified that she is Shirilla's mother.

{¶ 105} According to Natalie, she never heard Shirilla express suicidal thoughts prior to the crash and she testified that Shirilla was living at the Russo house.

{¶ 106} With respect to Shirilla's physical health, Natalie has seen Shirilla suffer symptoms from POTS at least twice. Natalie described her understanding that the condition can cause low blood pressure and an increased heart rate and can cause someone to lose consciousness.

{¶ 107} On cross-examination, Natalie testified that Shirilla was diagnosed with POTS in 2017 at the Cleveland Clinic; Natalie could not remember the name of the doctor who made the diagnosis. Natalie took Shirilla to the doctor after Shirilla fell to the kitchen floor on one occasion. The doctors made the diagnosis and gave Shirilla "salt tabs" to treat the condition. Shirilla would take the tablets or eat a salty food "as needed."

{¶ 108} Since the diagnosis, there have been a couple occasions where Shirilla would feel herself feeling low in salt or "woozy" and would sit down and eat some crackers or another salty food.

{¶ 109} Natalie admitted that she helped Shirilla apply for a driver's license twice since the POTS diagnosis was made and neither time disclosed the condition.

{¶ 110} Natalie testified that Shirilla had experienced a POTS episode a week or two before the crash and reported that "[i]t was really bad, and it hadn't been that bad in a long time, and she was scared it was going to get worse." Natalie admitted that she did not take Shirilla to a doctor or limit Shirilla's driving privileges.

{¶ 111} Natalie's statement on direct that Shirilla had never threatened suicide was impeached with a police report from March 23, 2020, that reflected that police and fire personnel were dispatched to the Shirilla home to respond to a fifteen-year-old female who had threatened suicide. The police report went on to state that Shirilla would not be transported to a hospital because her parents did "not think her threats are real" and did not "believe she will hurt herself."

{¶ 112} The defense renewed its Crim.R. 29 motion before the court returned its verdict and the motion was denied.

{¶ 113} The trial court found Shirilla guilty of all counts.

{¶ 114} The court commented specifically on the video exhibit showing the crash, calling the crash "chilling and tragic" and stating that the video "clearly shows the purpose and intent of the Defendant" to cause death. It noted that Shirilla "made the decision to drive a car, to drive an obscure route, a route she visited a few days before, and a route not routinely taken by her." It noted that Shirilla chose to drive early in the morning, when few people would be around to witness the accident or provide help. It concluded that Shirilla intentionally pressed the pedal to the floor, taking the car to nearly 100 m.p.h. and aiming the car at the brick wall. The court stated that it could only be speculated whether she intended to kill herself. But it

concluded beyond a reasonable doubt that Shirilla acted purposefully and intentionally to kill Russo and Flanagan; her actions were "controlled, methodical, deliberate, intentional, and purposeful."

{¶ 115} At the sentencing hearing, the parties agreed with each other as to merger issues, leaving the court to sentence Shirilla on four offenses: Counts 1 and 2, murder, each an unspecified felony in violation of R.C. 2903.02(A); Count 11, drug possession, a fifth-degree felony violation of R.C. 2925.11(A) and Count 12, possessing criminal tools, a fifth-degree felony violation of R.C. 2923.24(A).[1]

{¶ 116} The court imposed a sentence of seven months in prison on Count 11 and Count 12 with credit for time served. The court suspended Shirilla's driver's license for life based on her convictions for aggravated vehicular homicide.

{¶ 117} Family members of the victims then addressed the court. The State addressed the court, showing videos and photographs of Shirilla at a concert and celebrating Halloween during the investigation and arguing that she lacked remorse for her actions and refused to acknowledge that the crash was intentional. One of Shirilla's family members addressed the court as did Shirilla. The defense addressed the court and presented numerous letters in mitigation of sentence.

{¶ 118} Calling the crash the "horrible, terrifying, and tragic" result of a "selfish, intentional, and cruel decision" by Shirilla, the court sentenced her to serve

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[1] Counts 3, 5, 6, and 9 merged into Count 1. Counts 4, 7, 8, and 10 merged into Count 2.

an indefinite sentence of 15 years to life in prison on each of the murder counts. The court ordered all the sentences be served concurrently each other.

{¶ 119} Shirilla appealed, raising the following assignments of error for review:

Assignment of Error 1:

> The juvenile court erred when it concluded that the State presented sufficient credible evidence to demonstrate probable cause to believe that Shirilla purposely and/or knowingly caused the deaths of D.R. and D.F.

Assignment of Error 2:

> The State failed to introduce sufficient evidence to sustain the convictions in violation of Shirilla's right to due process of law as guaranteed by Article I, section 10 of the Ohio Constitution as well as the Fourteenth Amendment to the United States Constitution.

Assignment of Error 3:

> Shirilla's convictions are against the manifest weight of the evidence.

Assignment of Error 4:

> The trial court erred by permitting the State to introduce character and/or "other acts" evidence during its case-in-chief, thereby depriving Shirilla of her right to a fair trial in violation of the United States and Ohio Constitutions.

Assignment of Error 5:

> The trial court erroneously precluded the defense from introducing testimony and/or evidence relating to the July 17th incident, thereby prejudicing Shirilla's constitutional right to due process and a fair trial, as well as her right to present a meaningful and complete defense.

{¶ 120} We address Shirilla's assignments of error in a slightly different order than she presented them.

{¶ 121} Shirilla contends that her convictions were not supported by sufficient evidence. While she challenges the convictions on each of Counts 1 through 8, we note that Counts 2 through 8 merged into other offenses at sentencing. Therefore, any error with respect to the sufficiency or manifest weight of the evidence on Counts 2 through 8 is harmless beyond a reasonable doubt. *See, e.g.*, *State v. Ramos*, 2016-Ohio-7685, ¶ 14 (8th Dist.) ("When counts in an indictment are allied offenses, and there is sufficient evidence to support the offense on which the state elects to have the defendant sentenced, the appellate court need not consider the sufficiency of the evidence on the count that is subject to merger because any error would be harmless . . . ."), citing *State v. Powell*, 49 Ohio St.3d 255, 263 (1990).

{¶ 122} A challenge to the sufficiency of the evidence supporting a conviction requires a determination of whether the State has met its burden of production at trial. *State v. Hunter*, 2006-Ohio-20, ¶ 41 (8th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law. *Thompkins* at 386.

{¶ 123} An appellate court's function when reviewing the sufficiency of evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince a reasonable juror of the defendant's guilt beyond a reasonable doubt. *Id.*; *see also State v. Bankston*, 2009-Ohio-754, ¶ 4 (10th Dist.) (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness

credibility; rather, it essentially assumes the State's witnesses testified truthfully and determines if that testimony satisfies each element of the crime."). We must determine "'whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.'" *State v. Leonard*, 2004-Ohio-6235, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 124} The elements of an offense may be proven by direct evidence, circumstantial evidence, or both. *See, e.g.*, *State v. Wells*, 2021-Ohio-2585, ¶ 25 (8th Dist.), citing *State v. Durr*, 58 Ohio St.3d 86 (1991). Circumstantial evidence and direct evidence have "equal evidentiary value." *Wells* at ¶ 26, citing *State v. Santiago*, 2011-Ohio-1691, ¶ 12 (8th Dist.).

{¶ 125} A person commits murder by purposely causing the death of another. R.C. 2903.02(A).

{¶ 126} Shirilla concedes that the only issue in dispute was whether Shirilla crashed the vehicle purposely. She argues that there was no evidence that she acted purposely. We disagree.

{¶ 127} A witness testified that, less that a month before the fatal crash, he heard Shirilla threaten to crash a car in which Shirilla and Russo were traveling. Crash reconstruction and computer data from the vehicle revealed that Shirilla, on the date of the crash, made a controlled turn and then accelerated to the point that the pedal was pushed all the way to the floor while the vehicle traveled approximately 100 m.p.h. Someone inside the vehicle manually shifted the gearshift

into neutral, but it was forced back into drive as the vehicle continued hurtling forward. Shirilla never took her foot off the accelerator and never depressed the brake in the seconds leading up to the crash, even as the car passed through an intersection, went airborne, landed, continued through an industrial sign and into a brick wall.

{¶ 128} Medical experts examined Shirilla after the crash and could find no evidence that she had been afflicted with a neurological or musculature condition that could have contributed to the crash.

{¶ 129} A mechanical expert examined the vehicle and found no sign of latent defects that could have contributed to the crash.

{¶ 130} This evidence was sufficient for the factfinder to conclude, beyond a reasonable doubt, that Shirilla crashed the vehicle purposely intending to kill Flanagan and Russo.

{¶ 131} We, therefore, overrule Shirilla's second assignment of error.

{¶ 132} Shirilla contends that her convictions were against the manifest weight of the evidence.

{¶ 133} A manifest-weight challenge attacks the credibility of the evidence presented and questions whether the State met its burden of persuasion at trial. *See State v. Whitsett*, 2014-Ohio-4933, ¶ 26 (8th Dist.), citing *Thompkins*, at 387; *State v. Bowden*, 2009-Ohio-3598, ¶ 13 (8th Dist.).

{¶ 134} When considering an appellant's claim that a conviction is against the manifest weight of the evidence, the court of appeals sits as a "'thirteenth juror'"

and may disagree with "the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). The reviewing court must examine the entire record, weigh the evidence and all reasonable inferences, consider the witness' credibility 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. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). Reversal on manifest weight grounds is reserved for the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *Martin*, *supra*.

{¶ 135} Shirilla contends that the weight of the evidence establishes that Shirilla and Russo's relationship was in a good place at the time of the fatal crash. Burlinghaus and Vraja saw them shortly before the crash and did not report anything out of the ordinary. Others who knew Shirilla and Russo — Groleau, Shipley and Shirilla's mother — also testified that the two seemed to be in love. Shirilla points out that her POTS condition may have led to a medical issue that caused the accident, or she may have had some other medical emergency like a heart attack or seizure. Shirilla posited that the crash could have been caused by distracted driving or simple recklessness contrary to the testimony of Detective Hazou that Shirilla often drove distracted or recklessly according to her social media. She argues that, in light of all these possible other explanations, the manifest weight of the evidence weighs against the verdicts.

{¶ 136} After a careful review of the record, we find that this is not the exceptional case where the evidence weighed heavily against the verdicts.

{¶ 137} A conviction is not against the manifest weight of the evidence solely because a factfinder heard inconsistent or contradictory testimony. *State v. Wade*, 2008-Ohio-4574, ¶ 38 (8th Dist.), citing *State v. Asberry*, 2005-Ohio-4547, ¶ 11 (10th Dist.); *see also State v. Mann*, 2011-Ohio-5286, ¶ 37 (10th Dist.) ("'While the jury may take note of the inconsistencies and resolve or discount them accordingly, . . . such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence.'"), quoting *State v. Nivens*, 1996 Ohio App. LEXIS 2245, 7 (10th Dist.) (May 28, 1996). The decision whether, and to what extent, to believe the testimony of a particular witness is "within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Johnson*, 2014-Ohio-494, ¶ 54 (8th Dist.).

{¶ 138} Here, the record reflects that the factfinder was persuaded by the forensic-reconstruction evidence and other evidence showing the constant maximum acceleration leading to the crash, in connection with Shirilla's previous threats and the fact that her cellphone had been located in the area of the crash in the days leading up to the crash. While certain friends and family testified about the loving nature of the relationship between Shirilla and Russo, other witnesses testified that July 2022 also saw significant fighting between them. The latter claim was corroborated by video evidence. Testimony established that these fights involved Shirilla threatening Russo and hitting him; in one instance, according to a

witness, Shirilla threatened to crash a vehicle that she and Russo were traveling in together.

{¶ 139} While Dr. Tseng testified that it is possible that Shirilla could have suffered a medical emergency like a seizure or mini-stroke while still appearing normal in the medical examination, other evidence makes this potential explanation seem unreasonable. For example, Shirilla denied having adverse medical conditions when applying for a driver's license both before, and after, the crash. Moreover, someone manually moved the gearshift back into drive after it was moved to neutral in the seconds before the crash. There was no evidence presented that any medical condition could have caused Shirilla to simultaneously lose the ability to take her foot off the accelerator or hit the brakes while also intentionally manipulating the gearshift.

{¶ 140} A distracted-driving incident is also not consistent with the forensic evidence, which shows that Shirilla never took her foot off the accelerator, even as the car hit a curb, went airborne, landed and continued toward a brick wall.

{¶ 141} Shirilla argued her case to the trial court and the court was permitted to reject any portion of the State's evidence or witness testimony that was inconsistent or otherwise unbelievable. We cannot say that this is the exceptional case in which the evidence weighs heavily against the court's verdicts.

{¶ 142} We, therefore, overrule Shirilla's third assignment of error.

{¶ 143} In her first assignment of error, Shirilla contends that the juvenile court erred by transferring her case to the general division of the common pleas

court. Her argument largely tracks her sufficiency argument above, namely that the evidence presented during the probable cause hearing established that Shirilla and Russo were in love and getting along "perfectly fine" before the crash and that there was insufficient evidence that Shirilla purposefully crashed the car.

{¶ 144} "Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult." *In re M.P.*, 2010-Ohio-599, ¶ 11, citing R.C. 2151.23(A). However, under certain circumstances, the juvenile court "has the duty" to transfer a case, or bind a juvenile over, to the adult criminal system where the juvenile may be tried as an adult and face criminal sanctions. *In re M.P.* at ¶ 11, citing R.C. 2152.10 and 2152.12. There are two types of transfers under Ohio's juvenile justice system — mandatory transfers and discretionary transfers. *State v. D.W.*, 2012-Ohio-4544, ¶ 10.

{¶ 145} "'Mandatory transfer removes discretion from judges in the transfer decision in certain situations.'" *Id.*, quoting *State v. Hanning*, 89 Ohio St.3d 86, 90 (2000); R.C. 2152.12(A). "'Discretionary transfer . . . allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety.'" *D.W.* at ¶ 10, quoting *Hanning* at 90; R.C. 2152.12(B).

{¶ 146} R.C. 2152.12(A)(1)(a) states, in relevant part:

> After a complaint has been filed alleging that a child is a delinquent child for committing one or more acts that would be an offense if committed by an adult, if any of those acts would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer

> the case if . . . [t]he child was sixteen or seventeen years of age at the time of the act charged that would be aggravated murder, murder, attempted aggravated murder, or attempted murder and there is probable cause to believe that the child committed the act charged.

{¶ 147} After a careful review, we disagree with appellant's contention that the State failed to establish probable cause in the juvenile court.

{¶ 148} In other words, if a child is eligible for mandatory bindover and if probable cause exists to believe that the juvenile committed the act charged, the juvenile court must enter an order of transfer. *In re C.G.*, 2012-Ohio-5286, ¶ 29 (8th Dist.); *In re M.P.* at ¶ 11; Juv.R. 30(B) ("In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.").

{¶ 149} To establish probable cause in a bindover proceeding, the State has the burden to present credible evidence supporting each element of the offense. *State v. Iacona*, 93 Ohio St.3d 83, 93 (2001). Probable cause in this context requires "credible evidence that 'raises more than a mere suspicion of guilt,'" but does not require evidence of guilt beyond a reasonable doubt. *In re D.M.*, 2014-Ohio-3628, ¶ 10, quoting *Iacona* at 93. In other words, probable cause in this context is "a fair probability, not a prima facie showing, of criminal activity." *State v. Martin*, 2021-Ohio-1096, ¶ 32 (8th Dist.), quoting *State v. Starling*, 2019-Ohio-1478, ¶ 37 (2d Dist.), quoting *State v. Grimes*, 2010-Ohio-5385, ¶ 16 (2d Dist.); *see also In re B.W.*, 2017-Ohio-9220, ¶ 20 (7th Dist.) ("Probable cause is a flexible concept grounded in fair probabilities which can be gleaned from considering the totality of the

circumstances."), citing *Iacona* at 93. Probable cause is "'a reasonable ground for belief of guilt.'" *In re B.W.* at ¶ 20, quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949). It does not require a showing that a belief is correct or that it is more likely true than false. *In re B.W.* at ¶ 20, citing *Texas v. Brown*, 460 U.S. 730, 742 (1983); *see also In re J.R.*, 2021-Ohio-2272, ¶ 32 (8th Dist.).

{¶ 150} In considering whether probable cause exists, the juvenile court must "evaluate the quality of the evidence presented by the State in support of probable cause as well as any evidence presented by the respondent that attacks probable cause" to determine whether the State has presented credible evidence going to each element of the offense charged. *Iacona* at 93. However, "while the juvenile court has a duty to assess the credibility of the evidence and to determine whether the State has presented credible evidence going to each element of the charged offense, it is not permitted to exceed the limited scope of the bindover hearing or to assume the role of the ultimate fact-finder." *In re A.J.S.*, 2008-Ohio-5307, ¶ 44; *In re D.M.*, 2014-Ohio-3628, at ¶ 10.

{¶ 151} The juvenile court's probable cause determination in a mandatory bindover proceeding involves questions of both fact and law. *In re A.J.S.* at ¶ 1, 51. As a result, our review of the juvenile court's decision is mixed. We defer to the juvenile court's determinations regarding witness credibility, reviewing those determinations for abuse of discretion. However, whether the State has presented sufficient evidence to support a finding of probable cause is a question of law we

review de novo, without any deference to the juvenile court. *In re C.G.*, 2012-Ohio-5286, at ¶ 31; *In re A.J.S.* at ¶ 1, 51.

{¶ 152} At this stage of the proceedings, the State was not required to prove the truth of the allegations against Shirilla. It had to present credible evidence showing probable cause supporting each element of the offenses charged. Based on the evidence presented at the probable cause hearing, we disagree with Shirilla that the State failed to meet this burden.

{¶ 153} As detailed above, the evidence established that Shirilla pressed the accelerator pedal to one hundred percent acceleration, causing the vehicle to reach approximately 100 m.p.h. before crashing into a brick wall, killing Russo and Flanagan. Whether there was probable cause to commit murder turned, essentially, on whether there was credible evidence that Shirilla purposely caused the crash. There was.

{¶ 154} Shirilla was examined by medical professionals after the accident and there was no medical evidence that she suffered any adverse medical event that caused the crash. The vehicle was examined by an expert who determined that there was no evidence that a mechanical failure caused the crash, either.

{¶ 155} The State also presented credible evidence of a potential motive Shirilla may have had for causing the crash. Investigators testified that Russo's brother told them that Russo was considering ending the relationship. Russo's mother told them about the incident on the highway, in which Russo said Shirilla tried to crash the car.

{¶ 156} While there was evidence suggesting that Shirilla communicated that Russo was at fault for that highway incident and while the State could not present evidence establishing that Shirilla was angry at Russo or otherwise upset immediately before the crash, the State only needed to establish probable cause at this stage of the proceedings.

{¶ 157} After reviewing the evidence presented at the hearing, we conclude that the State did establish probable cause and, therefore, that there was no error when the juvenile court ordered the case transferred to the general division of the common pleas court for prosecution.

{¶ 158} We overrule Shirilla's first assignment of error.

{¶ 159} In her fourth assignment of error, Shirilla contends that the trial court erred by allowing the State to introduce what she characterizes as improper character or "other acts" evidence pursuant to Evid.R. 404(B).

{¶ 160} The State had filed both a notice of intent to use other acts evidence under Evid.R. 404(B) as well as a motion to introduce other acts evidence including evidence that on July 17, 2022, Shirilla was driving on Interstate 71 with Russo as a passenger when she threatened to immediately crash the vehicle during a disagreement between them and that she was observed hitting him with her hands during that incident. Also, the notice indicated that the State intended to introduce evidence that on occasion in July 2022, Shirilla came to Russo's home and, when he refused to allow her entry, angrily yelled at him, beat on the door and threatened him.

{¶ 161} The trial court granted the State's motion.

{¶ 162} The State stated that this evidence was not being offered to show Shirilla's bad character, but rather to prove Shirilla's "motive, intent, knowledge, absence of mistake or accident" and to provide context with respect to Shirilla's relationship with Russo. Specifically, the State argued as follows:

> [Shirilla's] past threats and aggression towards [Russo] provide an important perspective of how [Shirilla] responds in situations where she is displeased or in disagreement with others. Further, the evidence shows that [Shirilla] was aware of her ability to cause harm to the victims, especially by means of her own vehicle, and how she could use the power of threats and control to ultimately reach the outcome she desired.

{¶ 163} Pursuant to Evid.R. 404(B)(1), "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, evidence of other crimes, wrongs, or acts may be admissible "for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid.R. 404(B)(2).

{¶ 164} "The key is that the evidence must prove something other than the defendant's disposition to commit certain acts. Thus, while evidence showing the defendant's character or propensity to commit crimes or acts is forbidden, evidence of other acts is admissible when the evidence is probative of a separate, nonpropensity-based issue." *State v. Hartman*, 2020-Ohio-4440, ¶ 22.

{¶ 165} For other-acts evidence to be admissible: (1) the other-acts evidence must be relevant under Evid.R. 401; (2) the other-acts evidence must be introduced

for a purpose other than proving propensity, such as one or more of the permitted purposes set forth in Evid.R. 404(B)(2) and (3) the probative value of the other-acts evidence must not be substantially outweighed by the risk of unfair prejudice, confusion of the issues or misleading the factfinder under Evid.R. 403(A). *Hartman* at ¶ 24-29; *State v. Williams*, 2012-Ohio-5695, ¶ 19–20; *State v. Miller*, 2023-Ohio-1141, ¶ 88 (8th Dist.).

{¶ 166} Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401. In the Evid.R. 404(B) context, however, "the inquiry is not whether the other-acts evidence is relevant to the ultimate determination of guilt." *Hartman* at ¶ 26. The proffered evidence must be relevant to a legitimate nonpropensity purpose and the nonpropensity purpose for which the evidence is offered "must go to a 'material' issue that is actually in dispute between the parties." *Id.* at ¶ 26–27; *see also State v. Smith*, 2020-Ohio-4441, ¶ 37 ("[T]he relevance examination asks whether the proffered evidence is relevant to the particular purpose for which it is offered, as well as whether it is relevant to an issue that is actually in dispute.").

{¶ 167} Courts are precluded from admitting improper character evidence under Evid.R. 404(B) but have discretion to admit other-acts evidence that is admissible for a permissible purpose. *Hartman* at ¶ 22, citing *Williams* at ¶ 17; *Miller* at ¶ 89.

{¶ 168} Here, the challenged evidence went to a material issue that was actually in dispute between the parties — whether Shirilla purposely crashed the vehicle. Evidence that Shirilla and Russo were fighting in July 2022 (including days before the crash), that Shirilla had threatened Russo and that she had threatened specifically to crash a vehicle in which they were both driving was directly and meaningfully relevant and probative of Shirilla's motive, intent and lack of accident or mistake in crashing the vehicle. After careful consideration, we find that the probative value of this evidence for these nonpropensity purposes was not substantially outweighed by the risk of unfair prejudice, confusion of the issues or misleading the factfinder.

{¶ 169} Shirilla also complains that Detective Hazou testified that Shirilla was seen in social-media photographs smoking marijuana in a vehicle. She says that the only reason this was introduced was to portray her as "an immoral drug abuser who was prone to engage in criminal activity." We disagree. As an initial matter, we note that the defense opened the door to this line of questioning in its cross-examination of Hazou, focusing on the results of Shirilla's blood draw that showed she had been under the influence of marijuana at the time of the crash. The context of the State's line of questioning was not to introduce propensity evidence but rather to introduce relevant evidence probative to the nonpropensity purpose of the absence of accident or mistake.

{¶ 170} After a careful review, we again find that the probative value of this evidence for this nonpropensity purpose was not substantially outweighed by the risk of unfair prejudice, confusion of the issues or misleading the factfinder.

{¶ 171} Because there was no error in the trial court's allowance of the challenged evidence, we overrule Shirilla's fourth assignment of error.

{¶ 172} In her fifth assignment of error, Shirilla contends that certain of the trial court's evidentiary rulings denied her a fair trial and prevented her from presenting a meaningful and complete defense. Specifically, she argues that she was prevented from cross-examining Martin and Hazou regarding text messages Russo sent on the day of the crash. Defense counsel did not proffer to the trial court the substance of these messages, but certain of the messages were introduced in the juvenile court proceedings.

{¶ 173} The scope and limitation of cross-examination are matters within the sound discretion of the trial court. *E.g.*, *In re E.O.T.*, 2019-Ohio-352, ¶ 32 (8th Dist.).

{¶ 174} After a careful review of the record, we find no abuse of discretion here. First, Shirilla's suggestion that the trial court excluded the additional text messages themselves is not corroborated by the record. Shirilla complains about the following exchange during Martin's cross-examination:

> [DEFENSE COUNSEL]: Are you aware that that day [the day of the crash] Dominic [Russo] texted Mackenzie [Shirilla]?
>
> [PROSECUTOR]: Objection.

[THE COURT]: Sustained.

[DEFENSE COUNSEL]: No further questions.

{¶ 175} Shirilla further complains about the following exchange during Detective Hazou's cross-examination:

> [DEFENSE COUNSEL]: You were asked [on direct] about texts, correct, by the prosecutor?
>
> [HAZOU]: I don't recall.
>
> [DEFENSE COUNSEL]: You don't recall?
>
> [HAZOU]: No.
>
> [DEFENSE COUNSEL]: Well, Dominic [Russo] texted people that night that he loved them, correct?
>
> [PROSECUTOR]: Objection.
>
> [THE COURT]: Sustained. We need to come to sidebar. Come up here.
>
> . . .
>
> [THE COURT]: As for this last question, which clearly the Detective was not asked on direct, it is stricken from the record.
>
> [DEFENSE COUNSEL]: My apologies, Judge.

{¶ 176} In neither instance did defense counsel attempt to lay a foundation establishing how Martin could have known whether Russo texted Shirilla on the day of the crash or regarding Hazou's knowledge of Russo's text messages.

{¶ 177} More importantly, however, Shirilla never attempted to offer the text messages themselves into evidence and did not proffer their contents to the trial court on the record. She seems to focus her appellate argument on a text message

that Shirilla sent to a third party about the incident on July 17, 2022, wherein she stated that Shirilla said Russo had attempted to grab her steering wheel and try to cause an accident. She does not offer an explanation as to how either of the trial court's evidentiary rulings identified above — which concerned Russo's text messages to others — had the result of excluding a message Shirilla sent to a third party.

{¶ 178} In the absence of a proffer and having been directed at only these two evidentiary rulings, neither of which would seem to exclude further foundation and development into the text messages that Shirilla claims were excluded, and where defense counsel chose not to delve into those areas with these witnesses, we cannot find an abuse of discretion in the evidentiary rulings identified.

{¶ 179} We, therefore, overrule Shirilla's fifth assignment of error.

{¶ 180} After oral argument, the parties were ordered by this court to brief the issue of "whether or not there was compliance in the matter with R.C. 313.19 and the affect, if any, on the assignments of error and/or verdict if there was no compliance."

{¶ 181} Ohio Revised Code 313.19 states the cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner's verdict and in the death certificated filed with the division of vital statistics, shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death, unless the court of common pleas

of the county in which the death occurred, after a hearing, directs the coroner to change his decision as to such cause and manner and mode of death.

{¶ 182} The office of the Cuyahoga County Medical Examiner conducted autopsies on the persons of Dominic Russo and Davion Flanagan.

{¶ 183} The coroner's verdict dated September 12, 2022, as to the manner of death of Davion Flanagan, was recorded as "accidental."

{¶ 184} The report of the autopsy of Dominic Russo dated October 12, 2022 was also listed as accidental.

{¶ 185} Both autopsies were conducted by Dr. Joseph Felo, a forensic pathologist and a chief deputy medical examiner for Cuyahoga County.

{¶ 186} Dr. Felo testified that, in March 2023, he was asked by the office of the Cuyahoga County Prosecuting Attorney to review additional documents which had been generated by the Strongsville Police Department but were never submitted to the office of the medical examiner. According to Dr. Felo, after he reviewed the documents submitted to him, he changed the manner of death of both Davion Flanagan and Dominic Russo from accident to homicide.

{¶ 187} In the case at bar, the record is void of *any* evidence that the Cuyahoga County Medical Examiner complied with the statute.

{¶ 188} In her supplemental brief, Shirilla argued that a medical examiner lacks the statutory authority to amend a determination as to the manner and mode of a person's death as memorialized in a verdict and death certificate without being ordered to do so by a court. She directed this court to *Vargo v. Travelers Ins. Co.,*

Inc., 34 Ohio St.3d 27 (1987), in which the Supreme Court wrote that "the coroner's factual determinations concerning the manner, mode and cause of the decedent's death, as expressed in the coroner's report and death certificate, create a non-binding, rebuttable presumption concerning such facts in the absence of competent, credible evidence to the contrary." Shirilla argued that the medical examiner's amended conclusion that Russo's and Flanagan's deaths were homicides resulted in "impropriety" and "prejudice."

{¶ 189} She further argued that the amended autopsy reports were created solely for the purpose of using them against her in this criminal trial and were thus testimonial statements implicating the Confrontation Clause.

{¶ 190} The State responded by arguing that Shirilla waived all but plain error as to these issues and that R.C. 313.19 does not apply when a medical examiner decides to change its own determination. As for the Confrontation Clause argument, the State directs us to *State v. McFeeture*, 2015-Ohio-1814 (8th Dist.).

{¶ 191} The State is correct that we review these issues for plain error because neither was raised below. After a careful consideration, we decline to find plain error here but do caution the State as to the need to comply with R.C. 313.19.

{¶ 192} The Supreme Court has instructed courts to notice plain error "'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Gordon*, 2018-Ohio-259, ¶ 23, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. In order to show plain error, a defendant must evidence an error that "constitutes an obvious defect

in the trial proceedings and demonstrate that the error affected the outcome of the trial." *Id.*, citing *State v. Rogers*, 2015-Ohio-2459, ¶ 22.

{¶ 193} We are convinced not to exercise our discretion to find plain error here because we are not convinced that any error was obvious or that the amendment of the autopsy conclusions affected the outcome of the trial or resulted in a manifest miscarriage of justice.

{¶ 194} We find that, *in this case*, the change of the manner of death of Davion Flangan and Dominic Russo by the office of the Cuyahoga County Medical Examiner did not affect the verdict in this case. Although the trial court had before it evidence of the change as to the manner of death by the Cuyahoga County Medical Examiner's office, there was other evidence to support the verdicts.

{¶ 195} Dr. Felo testified that it was his choice to amend the conclusions, he summarized what he reviewed in coming to that determination and he identified the reason why he came to those conclusions. In other words, the factfinder heard the circumstances of the amendment and could judge those circumstances as well as the credibility of the evidence that caused the amendment.

{¶ 196} Finally, in light of precedent from this court, any error in the procedure under the circumstances would not be obvious. This court has held that R.C. 313.19 contemplates situations where a third party seeks to have a trial court direct a coroner to change the manner of a person's death, unlike the situation here. *See McFeeture* at ¶ 137.

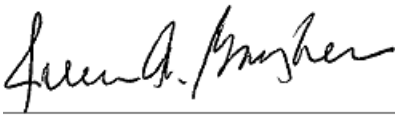
{¶ 197} Having overruled Shirilla's assignments of error for the reasons stated above, we affirm.

The court finds there were reasonable grounds for this appeal.

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

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending is terminated.

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



EILEEN A. GALLAGHER, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR