[Cite as *State v. Griffin*, 2024-Ohio-4894.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 112928
v.	:	
PIERRE GRIFFIN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 10, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-670235-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Sarah Hutnik and Alan Dowling, Assistant Prosecuting Attorneys, *for appellee*.

Edward M. Heindel, *for appellant*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Pierre Griffin, appeals his convictions for murder. For the reasons that follow, we affirm.

{¶ 2} On May 5, 2022, a Cuyahoga County Grand Jury returned a nine-count indictment charging Griffin with aggravated murder, murder, felonious assault and

kidnapping. The charges stemmed from an investigation into the shooting death of Deandre Williams on October 24, 2021.

{¶ 3} Before the case came for trial, Griffin filed a motion to dismiss the indictment pursuant to Crim.R. 12(A) due to prosecutorial misconduct. Griffin argued that the State violated his constitutional rights when it destroyed the BMW that Griffin was driving at the time of the shooting, because the vehicle was material evidence and the defense was not able to inspect it for exculpatory evidence. Before the vehicle was destroyed, the defense had submitted a discovery request to the State asserting the right to inspect any tangible items obtained from, or belonging to, Griffin that were in the State's possession. The State opposed the motion to dismiss.

{¶ 4} The trial court held a hearing on the motion, at which the State called three witnesses to describe the circumstances of the vehicle's impound, search and destruction: Detectives Charles Schultz and Darryl Johnson and Sergeant Lisa Ciritovic, all with the Cleveland Police Department. The evidence adduced at the hearing provided the following facts.

{¶ 5} On April 27, 2022, Griffin's BMW was process towed to a police impound lot designated for vehicles requiring further evidence processing. It was parked in a garage at the lot that is used for evidence processing.

{¶ 6} On July 14, 2022, a detective with the department's scientific investigative unit processed the vehicle for evidence pursuant to a search warrant, searching for fingerprints and DNA and took approximately 80 photographs.

{¶ 7} According to Sergeant Ciritovic

> When a detective advises us at [the impound lot] that the vehicle is ready to be released, meaning that the owner can then pick up the car, we take it off hold as we say. So it's understood in [the department's] computer system . . . that the car is ready then for pickup by the owner of this vehicle or an entrusted individual that that owner feels can pick up the car. We end up not only updating in that computer system, but we notify the owner by sending out . . . Certified Mail, to the owner, the last known listed address that the individual is residing at. And this is done via . . . the Bureau of Motor Vehicles.

{¶ 8} This notice also warns a vehicle's owner that the car will be "disposed of" if it is not picked up by a date certain, 21 days from the date of the notice. In practice, the department often waits longer than that date to destroy vehicles, and it will extend flexibility to owners that communicate that they are making efforts to pick up the vehicle.

{¶ 9} The department followed these protocols with respect to Griffin's BMW. On July 15, 2022, police sent a notice, through certified mail, to Griffin's last known address (on Wyncote Road in Cleveland) and to a financial institution that was a lienholder on the vehicle. The notice stated that the vehicle was ready to be picked up and warned that the vehicle would be destroyed if not picked up by August 5, 2022. These notices are routed through Cleveland City Hall and records indicate that the notice was mailed from City Hall on July 20, 2022. The receipt for the notice mailed to Griffin's address was returned as unclaimed but the financial institution signed for its copy.

{¶ 10} Police at the impound lot did not ask the detectives whether Griffin was detained at the Cuyahoga County Corrections Center when it mailed the notice to his last known address. They did not check the court's docket to determine

whether he was detained or if bond had been posted. Griffin was in pretrial detention at the Cuyahoga County Corrections Center at the time.

{¶ 11} Police waited a week after the August 5, 2022 destruction date, as a courtesy, to allow Griffin or the financial institution to make contact. Police then had the vehicle destroyed on August 12, 2022.

{¶ 12} There were no documented inquiries about the vehicle from anyone outside the police department before the vehicle was destroyed. A defense investigator went to the lot to examine the car on September 8, 2022, and was informed that it had been destroyed.

{¶ 13} The defense argued that the vehicle was material evidence in an aggravated murder case and was made unavailable with no notice to Griffin or to defense counsel, who were then unable to examine the vehicle for exculpatory evidence. Counsel specifically complained that they could not examine the several bullet defects in the car and establish the trajectory of the bullets and the distance from which they were fired, which could have supported the defense theory that Williams or another person shot at Griffin first and continued shooting at him as he drove away.

{¶ 14} The State responded that the vehicle is not materially exculpatory because months passed between the incident and the date police located the vehicle and no persons reported that their bullets struck a vehicle, so it was not clear that the bullet defects in the vehicle came from this incident. Moreover, Griffin had not asserted self-defense before the vehicle was destroyed. Finally, the State pointed out

that the police department destroyed the vehicle in routine compliance with its own policies, not for any improper purpose.

{¶ 15} The trial court issued a written opinion denying the motion. The court reasoned that vehicle was not materially exculpatory but "at most, potentially useful evidence in Defendant's defense." As such, there needed to be a showing of bad faith on behalf of the State to demonstrate a due process violation and, ultimately, the trial court found no due process violation. The case then proceeded to trial.

{¶ 16} Ricardo Roman testified[1] that in October 2021, he was employed as a police detective by the Cleveland Police Department and was assigned to a task force operated by the U.S. Secret Service. Roman performed digital forensics in that assignment. Roman assisted in this investigation by extracting data from Deontau Scott's cell phone at the request of homicide detectives. Scott consented to the search. After completing the extraction, Roman provided the extracted data to the homicide detectives.

{¶ 17} Alex Cole testified that he is employed as a police patrol officer with the Cleveland Police Department. On October 21, 2024, police received a call for service at approximately 8 p.m. in reference to a report of "shots fired." Cole and his partner responded to the scene, a house located on Svec Avenue in Cleveland. When the officers arrived, they found a male lying on the front porch of the house suffering

[1] Roman testified remotely through videoconferencing software, even though he was at his home in Parma, Ohio. The record reflects that the parties stipulated to the remote testimony to accommodate Roman's work obligations; no party raises an error in this appeal related to the remote nature of the examination.

from gunshot wounds, another man was providing aid to the injured man and a third man was standing on the porch. Spent cartridge cases were visible on the porch.

{¶ 18} As Cole's partner provided medical aid to the wounded man, Cole searched the street for more evidence of the shooting.

{¶ 19} Cole located two spent .40-caliber cartridge cases in the street. The cases were not directly in front of the house where the injured man was located but were "a house or two" away.

{¶ 20} Ashley Santa testified that she is employed as a patrol officer with the City of Cleveland Police Department. She responded with Officer Cole to the scene of the shooting. Santa began rendering aid to an injured man who was lying on the front porch of the house. As she was rendering aid, she observed several spent cartridge cases on the porch.

{¶ 21} Santa asked the two men standing on the porch "if they had shot a firearm from that location." After another officer took over chest compressions, Santa was able to recover a firearm from inside a mailbox attached to the porch.

{¶ 22} Emergency medical personnel arrived on scene shortly thereafter. After calling a sergeant to the scene, Cole and Santa were directed to respond to another call for service elsewhere and left the scene.

{¶ 23} On cross-examination, Santa admitted that the mailbox containing the firearm was closed when she arrived. She does not know what other changes, if any, were made to the crime scene before she arrived on scene.

{¶ 24} Walter Emerick testified that he is employed as a police detective with the Cleveland Police Department's crime scene and record unit. Emerick responded to the scene of the shooting and took photographs. It was raining and windy when officers were collecting evidence, which can make it difficult to find pieces of evidence.

{¶ 25} Emerick noted that it appeared that a bullet had come through the front door of the home then passed through a chair before penetrating an interior wall of the home. The bullet's copper jacket appeared to have fallen off the round as it passed through the chair; the jacket landed on a towel in the room.

{¶ 26} Emerick collected two .40-caliber cartridge cases from the street. It appeared that a vehicle had driven over both. He also collected nine 9 mm cartridge cases from the front porch of the home. He swabbed suspected blood and collected other evidence from the scene for potential processing, including the copper jacket and spent bullet recovered inside the home and the firearm recovered from the mailbox.

{¶ 27} Emerick collected swabs from Scott and Allen Isaacs to test for gunshot residue.

{¶ 28} On cross-examination, Emerick admitted that the .40-caliber cartridge cases were found approximately 100 to 125 yards from the residence where the victim was found. He does not know when the cases were deposited on the street. He further admitted that rain and wind can diminish the gunshot residue on a shooter's body.

{¶ 29} Allen Isaacs testified that he is Scott's cousin and had been friends with the victim, Deandre Williams. In October 2021, Isaacs lived on Svec Avenue with his girlfriend. Williams was staying there as well, although he would "bounce around." On October 24, 2021, Williams, Isaacs and Scott were at Isaacs house watching a football game. There came a time that Scott left the house through the front door but did not say where he was going which was not unusual. Williams and Isaacs were sitting in the living room when Scott left.

{¶ 30} Sometime after Scott left, Isaacs heard a woman scream outside the house and it sounded as if she was in danger. Isaacs and Williams got up and opened the front door of the home. The porch light was on when he opened the interior door, he saw a male hit Scott in the face with a pistol and Scott fell to the ground. A female was standing in front of a car that was parked in front of his house. Another car was parked behind the first, facing the opposite direction.

{¶ 31} The male stood over Scott and pointed the gun at him. Williams and Isaacs then opened the screen door and went out onto the front porch. The male then raised his gun from Scott and pointed it toward them on the porch. The male began walking back toward what appeared to be his car pointing the gun at them the whole time.

{¶ 32} Once the male reached his car, he began shooting at them. When that happened, Williams pulled out a gun and started shooting back. Isaacs heard bullets entering his home. He heard "a lot" of shots. Seconds later, Williams fell and Isaacs

jumped off the porch and ran to the backyard to escape the gunfire. Scott was crawling up the driveway during the shooting.

{¶ 33} When Isaacs returned to the front of the house, he observed that the shooter had left the area and that Scott was standing on the porch and the female was still in front of her car in the street talking to Scott. Isaacs attempted to give Williams aid because Williams had been shot and appeared to be in "critical" condition. Isaacs called 9-1-1. While Isaacs was rendering aid to Williams and before police arrived, the female left the area.

{¶ 34} Before calling 9-1-1, Isaacs took Williams' gun and placed it in a mailbox. Isaacs was afraid that the police might shoot him in a "misunderstanding" if the gun was within his reach when they arrived but Isaacs told the responding officers where to locate the gun.

{¶ 35} Isaacs advised Scott to seek medical attention but does not know if Scott did so. The day after the shooting, Scott's head was swollen.

{¶ 36} Isaacs never saw the female who had been in front of his house again and does not know Griffin nor had he ever met him.

{¶ 37} Under cross-examination, Isaacs admitted that it was more than 30 minutes after Scott left the house that they heard the woman screaming but it may have been an hour later. Isaacs denied firing a gun that night. The defense played a recording from a police body-worn camera in which Isaacs appears to say something like, "I seen a gun and fired, bruh." Isaacs testified that he actually said "a gun fired, bruh."

{¶ 38} Michael Legg testified that he is employed as a homicide detective with the Cleveland Police Department. Legg responded to the scene of the shooting on October 24, 2021, collected evidence and took measurements.

{¶ 39} He estimated that the two cartridge cases found in the street were "under 95 feet" from the porch where the victim was found.

{¶ 40} Legg returned to the scene the next day and observed that there were bullet defects to a house "across the street and to the left" from the scene of the shooting, as one would observe if standing on the porch where the victim was found and facing the street. This was the same general direction as the two cartridge cases found in the street.

{¶ 41} Legg participated in the interviews of Scott and Isaacs. He also interviewed Future Blanks, a woman living in the house a vacant lot away from the shooting scene.

{¶ 42} Steven Loomis testified that he is employed as a detective with the Cleveland Police Department's homicide unit. On October 24, 2021, Loomis responded to the hospital and met with Williams' friends and family. Loomis also collected a spent bullet that medical staff said had fallen out of Williams' clothing during medical treatment.

{¶ 43} Loomis, acting as a blind administrator, presented a photograph lineup to Scott, who identified Griffin. It is unclear, from the record the purpose of that identification.

{¶ 44} Police contacted Brittany Hurt, who investigators learned was the female who had been at the scene during the shooting. Detectives scheduled an appointment for Hurt to come in for a formal interview. Hurt never appeared for the interview. Loomis contacted her by phone after the missed interview and Hurt sounded scared. Loomis asked her questions about the car Griffin drove to Svec Avenue on the day of the shootings and Hurt seemed to be deceptive in responding.

{¶ 45} Loomis obtained video from a surveillance camera at a nearby elementary school from the day of the shooting. The camera captured a car parked at the Svec Avenue address at 7:15 p.m. Investigators came to learn that Hurt and Scott were inside that vehicle. The car remained there for more than a half hour, at which point another vehicle driving on the street stopped next to Hurt's vehicle. Investigators determined that this was Griffin's car.

{¶ 46} While the camera's view is limited by distance and weather conditions, two individuals can be seen walking close together toward the house one following the other. They stop close to the house, before one of the individuals begins walking back toward the cars. A third individual is then seen in the area of the cars. Griffin's car was driven away. From the time Griffin's car arrived to when it departed was approximately one minute. Griffin's car is driven away at a high rate of speed and failed to stop at a stop sign.

{¶ 47} The third individual — who had been standing in the area of the cars — can be seen approaching the house. An individual can be seen walking back and forth between the house and the cars and then Hurt's vehicle drives away.

{¶ 48} Loomis testified that a warrant was obtained for Griffin and Griffin was arrested on April 27, 2022, by a U.S. Marshal's task force. When investigators located Griffin, Hurt was with him.

{¶ 49} On cross-examination, Loomis admitted that the picture in the surveillance video was not very clear. While the video shows individual's bodies, it does not show faces.

{¶ 50} Jason Howell testified that he is employed as a network intrusion forensic analyst with the U.S. Secret Service. In that role, he periodically assists the Cleveland Police Department with homicide investigations. In relation to this investigation, Howell assisted Cleveland detectives by extracting data from an iPhone. The iPhone was restored from a backup on December 10, 2021. That can happen when a user "wipes" the phone, meaning erasing information on it and rewriting it from a historical backup.

{¶ 51} On cross-examination, Howell admitted that there are several reasons why a user might back up their phone, such as if it was stolen or they were locked out of it.

{¶ 52} Charles Lewis testified that he is employed as a corrections sergeant. In that role, he oversees the mail coming and going from the detention center. Lewis obtained a letter written by Griffin from the detention center pursuant to a subpoena.

{¶ 53} In the letter, which was addressed to Michael Moore, Griffin referenced court proceedings and suggested that he knew who provided a tip to law

enforcement about his location. He wrote that "I know y'all going to make sure I'm good at trial" and said that someone had to "step up" and get ahold of "this situation." He said that he "shouldn't be worried about her."

{¶ 54} On cross-examination, Lewis admitted that while the letter was addressed from Griffin, he could not confirm who actually wrote the letter.

{¶ 55} Future Blanks testified that she was living on Svec Avenue in October 2021, a neighbor to the residence where Williams was killed. On October 24, 2021, she was in bed watching television when she heard a male shouting outside. She got out of bed and looked out her window. She saw "two gentlemen arguing." One male was louder than the other.

{¶ 56} Blanks saw the two men walking into the yard of the residence next door. One of the men had a gun and "was like pointing at the other guy's head saying I'll blow your F'ing head off or something." She backed away from the window at that point. The shouting man was holding the gun inches from the other man, who was not fighting back but rather "just standing there."

{¶ 57} She saw that there was a car outside of her house and a car parked outside of the neighbor's house. She saw a female and heard the female tell "the guy with the gun to stop and to come on, let's go." After Blanks backed away from the window, she heard gunshots.

{¶ 58} Blanks called 9-1-1. She was not able to identify any faces from her perspective.

{¶ 59} On cross-examination, Blanks admitted that she has a felony conviction for vehicular homicide and, as part of that case, also pleaded guilty to driving under the influence of alcohol. She further admitted that she did not see either man hit the other.

{¶ 60} Michael Hale testified that he is employed as a detective with the Cleveland Police Department. He assisted in the execution of a search warrant at the apartment in Warrensville Heights where Griffin had been arrested. He took photographs of the scene, including photographing two mobile phones that had been located inside. Hale collected the phones as evidence as well as Griffin's driver's license and pieces of mail addressed to Griffin.

{¶ 61} Zara Hudson testified that he is employed as a detective with the Cleveland Police Department's homicide unit. Hudson responded to the crime scene on October 24, 2021, with his partner, Salvatore Santillo. By the time Hudson arrived, Williams had been taken from the scene by medical personnel.

{¶ 62} Hudson interviewed Isaacs and Scott at the scene through whom he learned that there had been a female at the scene during the shooting. Hudson obtained a name for the woman from interviewing Isaacs and Scott. Hudson also reviewed Isaacs' and Scott's phones to review any conversations that may have occurred with Hurt. He reviewed a conversation between the woman and Scott. He attempted to review Hurt's profile on the social-media website Instagram, but Scott reported that the account had been deleted.

{¶ 63} Curtiss Jones testified that he is employed as the supervisor of the trace-evidence unit at the Cuyahoga County Medical Examiner's Office and, without objection, the court accepted Jones as an expert in the area of trace-evidence analysis. Jones examined various pieces of evidence in connection with this investigation.

{¶ 64} Jones testified that gunshot residue was detected on Williams' hands and that there were several bullet defects noted in Williams' shirt. One was a graze. Two were entrance defects. For one of those entrance defects, Jones concluded that the gun that fired the bullet was greater than four to five feet from the victim when it discharged.

{¶ 65} Jones examined samples collected from Scott for gunshot residue. Three particles of gunshot primer residue were located on the sample. Jones also examined samples collected from Isaacs for gunshot residue. No residue was detected. On cross-examination, Jones admitted that rain could wash away gunshot residue.

{¶ 66} Lisa Moore testified that she is employed in the DNA department at the Cuyahoga County Regional Forensic Science Laboratory. The court accepted her as an expert, without objection. Moore performed DNA analysis on several samples submitted to her during this investigation.

{¶ 67} Swabs taken from the 9 mm handgun recovered from the porch area matched to Williams and unknown contributors. No match was found for Isaacs or Scott as a contributor.

{¶ 68} An insufficient quantity of DNA was found on the two .40-caliber cartridge cases collected from the street, so no profile could be developed with respect to those cases.

{¶ 69} Andrea McCollom testified that she is employed as a forensic pathologist and that she was formerly employed by the Cuyahoga County Medical Examiner's Office as the deputy medical examiner. The court accepted her as an expert in forensic pathology. Dr. McCollom performed the autopsy on Williams.

{¶ 70} Dr. McCollum testified that Williams had a gunshot wound to the left lateral chest and that the bullet traveled left to right and upward, passing through Williams' heart before exiting his body and striking his arm. The bullet lost enough energy that it did not penetrate the arm. The wound was fatal, but Williams would have been able to make "purposeful movement" for seconds to minutes.

{¶ 71} Williams had a second gunshot wound to his left back which traveled left to right and upward, striking several organs. Dr. McCollom recovered this bullet from Williams' body. This wound could also have been fatal on its own.

{¶ 72} Williams also had what appeared to be a wound from a bullet graze at his right clavicle.

{¶ 73} Dr. McCollom determined that Williams died from these gunshot wounds and she ruled his death a homicide.

{¶ 74} Brittney Hurt was called as a court witness, over defense objection.

{¶ 75} Hurt and Griffin have two children together, including one child conceived and born after the shooting at issue in this case.

{¶ 76} Hurt and Griffin were in a romantic relationship from 2018 through 2019 and had their first child together in 2019. Their relationship grew rocky after 2019 and by September 2021 they had broken up but remained living together.

{¶ 77} Hurt met Scott in November 2020 and they would exchange text messages and messages over Instagram. In September 2021, Griffin took Hurt's phone during an argument, angry that she was texting Scott. Hurt then communicated with Scott through her daughter's phone. Hurt was aware that Griffin exchanged messages with Scott during that time as well. Scott sent Hurt some screenshots of those messages, which read, among others: "You a b****"; "I'm on to a**. Yo"; "You scared a** . . . ." and "I'm beating her a** for texting you when she wake up." Scott also sent Hurt a screenshot of a number of missed calls from Griffin's phone number.

{¶ 78} Hurt met Scott in person for the first time in September 2021 on Svec Avenue where they stayed the entire evening. The two made plans to meet again on October 24, 2021. Hurt drove to Svec Avenue and brought alcohol for the two to drink together. She parked in front of the house and texted Scott that she was outside. Scott came outside and sat in the passenger side of her car. The two drank together and while they were in the car together, Hurt received a call from Griffin. He asked where she was and she said she was at her apartment.

{¶ 79} According to Hurt, less than five minutes later, Griffin drove past her car and parked just past it. Hurt was "shocked" and nervous; she told Scott that it was her baby's father's car. Hurt testified that she did not know how Griffin tracked

her but then admitted that she had provided police screenshots displaying notifications that in October 2021 she was being tracked by a device known as an Apple Airtag.

{¶ 80} Griffin exited his car and walked toward Hurt's car "visibly upset" according to Hurt. Griffin questioned Hurt loudly: "what the f*** was going on and what was I doing here or like is this what the f*** you doing." He then instructed Hurt to exit the car.

{¶ 81} Hurt told Griffin to leave and then suggested to Scott that she and Scott should go into the house. As Scott was exiting the car, Griffin walked to the passenger side and pulled Scott out of the car. The two men "tussled" and Griffin knocked Scott to the ground. Griffin told Scott that Griffin was going to "f*** him up." Hurt yelled at Griffin to stop and pleaded with him to leave. She did not see Griffin with a gun. Scott began calling for his relatives inside the house.

{¶ 82} Hurt saw two men come outside the home, see the fight and then run back inside the house. Griffin then looked at Hurt and said, "[L]et's get the f*** out of here."

{¶ 83} As Griffin was walking back to his car, the two men came back outside "and one started just shooting" from the porch. Griffin got inside the car and returned fire from inside the car prior to driving away.

{¶ 84} Hurt called 9-1-1 to report the shooting. She then took her children and went to stay at her sister's house.

{¶ 85} Hurt admitted that she deleted her Instagram account after the shooting.

{¶ 86} Hurt and Griffin continued having sexual relations after the shooting although Hurt said they did not consider themselves "back together." After the shooting, Hurt changed the locks to her residence "[a] lot of times" because she did not want Griffin there. Griffin eventually moved back in with her in April 2022.

{¶ 87} On cross-examination, Hurt testified that Scott appeared to be somewhat intoxicated when he exited the home on Svec Avenue. It was Hurt's understanding that he had been drinking and watching a football game.

{¶ 88} She further testified that Scott had made his way to the porch by the time the two men started shooting at Griffin.

{¶ 89} Thomas Morgan testified that he is employed as a forensic scientist with the Cuyahoga County Regional Forensic Science Laboratory, where he works in the firearm and toolmarks section. The court accepted Morgan as an expert in the area of firearms and toolmarks.

{¶ 90} Morgan examined the bullet recovered during Williams' autopsy and concluded that it was a .40-caliber copper-jacketed hollow-point bullet. Morgan also examined a copper jacket and the bullet recovered from Williams' clothing at the hospital. Morgan concluded that the copper jacket and bullet fragment were also from .40-caliber jacketed bullets. He concluded that the bullet from the autopsy, the copper jacket fragment and the bullet recovered at the hospital had been fired from the same gun. Morgan also examined the two .40-caliber cartridge

cases recovered from the street and concluded that they were both fired from the same firearm. Morgan further testified that he examined the nine 9 mm cartridge cases recovered from the porch and concluded that they were fired both from the handgun recovered from the mailbox at the Svec Avenue residence.

{¶ 91} Charles Schultz testified that he is employed as a detective with the Cleveland Police Department's homicide unit. Schultz responded to Svec Avenue on the day of the shooting. He assisted with the processing of the scene and then participated in the interviews of Scott and Isaacs.

{¶ 92} From those interviews, investigators developed Griffin as a suspect. When they could not get in contact with Hurt, they subpoenaed her phone records.

{¶ 93} After Griffin was arrested, Schultz participated in the search of Griffin's apartment. Investigators located Griffin's vehicle in the garage at the apartment. Investigators towed the vehicle to an impound lot. The vehicle was later searched pursuant to a search warrant. The vehicle had a number of bullet holes on the driver's side. Investigators searched the interior of the car for bullets and blood, including dismantling the door but they found none.

{¶ 94} Schultz participated in an interview with Griffin.

{¶ 95} On cross-examination, Schultz admitted that Griffin's vehicle was destroyed. He further admitted that investigators did not use trajectory rods to determine the bullet paths associated with the defects noted in Griffin's car.

{¶ 96} At the close of the State's case, Griffin moved for a judgment of acquittal under Crim.R. 29.

{¶ 97} The trial court granted the motion as to Count 1 (aggravated murder, Count 7 (felonious assault) and Count 9 (kidnapping).

{¶ 98} Griffin did not present any witnesses.

{¶ 99} During closing argument, the prosecution utilized a presentation slide deck that included slides on self-defense. The slides and counsel's argument told the jury that Griffin had to prove that he did not start the affray, believed he was in danger, had no duty to retreat and used reasonable force. The prosecutor argued that if Griffin failed with respect to one element, the defense did not apply.

{¶ 100} Griffin objected and the trial court sustained the objection and held a sidebar. The prosecutor then told the jury that the State had to prove beyond a reasonable doubt that one of the elements of self-defense did not apply in order to defeat that defense. The defense objected to a slide that appeared later and the court had the slide removed from view. At another sidebar, the State agreed to remove the slide and proceed without it. After the sidebar, the prosecutor again stated that the State has a burden to prove beyond a reasonable doubt that at least one element of self-defense does not apply.

{¶ 101} The defense moved for a mistrial based upon the State's repeated use of a slide that suggested that the onus was on the defendant to prove five elements as to a self-defense claim. The trial court denied the motion.

{¶ 102} There is no suggestion, from either party, that the trial court incorrectly instructed the jury on self-defense in its jury instructions.

{¶ 103} The jury returned its verdict on May 2, 2023. The jury found Griffin guilty on Count 2 and 3 – murder, and Counts 4, 5 and 6 – felonious assault, as well as all the firearm specifications attached to those counts. Griffin was found to be guilty of murder as charged in Counts 2 and 3 of the indictment and felonious assault as charged in Counts 4, 5, 6 and 8 of the indictment as well as all of the firearm specifications attached to those charges.

{¶ 104} On May 4, 2023, Griffin filed a renewed motion for judgment of acquittal pursuant to Crim.R. 29(C) which was denied after a hearing.

{¶ 105} Prior to sentencing, the parties agreed that Counts 2 through 5 merge and the State elected to proceed to sentencing on Count 2.

{¶ 106} The State and a relative of the victim addressed the court. The defense addressed the court in mitigation. Griffin declined to address the court on advice of counsel. One of Griffin's relatives addressed the court.

{¶ 107} Griffin was sentenced on Count 2 to a term of life imprisonment with parole eligibility after serving 15 years with a term of three years on the firearm specification to be served prior to and consecutive with the sentence on the underlying charge. As to Count 6, Griffin was sentenced to three years on the firearm specification to be served prior to and consecutive with a minimum of two years and a maximum of three years. "[T]he 3 year firearm spec on Count 6 is to be served consecutively to Count 2 sentence on base charge in Count 6 is to be served concurrently with the sentence in Count 2. Total sentence being life with parole eligibility after serving 21 years."

{¶ 108} Griffin appealed, raising the following assignments of error for review:

Assignment of Error 1:

> The trial court erred in denying Defendant's motion to dismiss the indictment because of the [S]tate's destruction of evidence.

Assignment of Error 2:

> The trial court erred in entering convictions for murder and felonious assault, in violation of Defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, as being against the manifest weight of the evidence as to Defendant's right to self-defense.

Assignment of Error 3:

> The trial court erred when it denied Defendant's motion for a mistrial after the prosecuting attorney had repeatedly displayed an exhibit that incorrectly shifted the burden of proof on a self-defense claim to the defendant.

A. Assignment of Error # 1

{¶ 109} Griffin contends that the trial court erred when it did not dismiss the indictment for prosecutorial misconduct based on the State's destruction of his vehicle.

{¶ 110} We review, de novo, a trial court's decision involving a motion to dismiss on the ground that the State failed to preserve exculpatory evidence. *State v. Blackshaw*, 2005-Ohio-5203, ¶ 10 (8th Dist.). The suppression of materially exculpatory evidence violates a defendant's due process rights, regardless of whether the State acted in good or bad faith. *State v. Geeslin*, 2007-Ohio-5239, ¶ 9, citing *Brady v. Maryland*, 373 U.S. 83 (1963).

{¶ 111} Specific tests are applied to determine whether the State's failure to preserve evidence rises to the level of a due process violation. The test depends on whether the lost or destroyed evidence involves "material exculpatory evidence" or "potentially useful evidence." *State v. Powell*, 2012-Ohio-2577, ¶ 73.

{¶ 112} To be materially exculpatory, "evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *California v. Trombetta*, 467 U.S. 479, 489 (1984). "Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt." *Id.* at 485. The defendant bears the burden to show that the evidence was materially exculpatory. *Powell* at ¶ 74, citing *State v. Jackson*, 57 Ohio St.3d 29, 33 (1991).

{¶ 113} This court has previously held that the possibility that evidentiary material could have exculpated the defendant if preserved or tested is not enough to satisfy the standard of constitutional materiality. *State v. Durham*, 2010-Ohio-1416, ¶ 12 (8th Dist.), citing *Arizona v. Youngblood*, 488 U.S. 51, 56 (1988). "A clear distinction is drawn by *Youngblood* between materially exculpatory evidence and potentially useful evidence. If the evidence in question is not materially exculpatory, but only potentially useful, the defendant must show bad faith on the part of the State in order to demonstrate a due process violation." *Geeslin*, 2007-Ohio-5239, at ¶ 10. Therefore, when evidence is only potentially useful, its destruction does not

violate due process unless the police acted in bad faith when destroying the evidence. *Cleveland v. Townsend*, 2013-Ohio-5421, ¶ 22 (8th Dist.), citing *State v. Miller*, 2005-Ohio-2516 (2d Dist.).

{¶ 114} The term "bad faith" generally implies something more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of the fraud. It also embraces actual intent to mislead or deceive another. *Powell*, 2012-Ohio-2577, at ¶ 81.

{¶ 115} Whether the destruction of the car amounts to a due process violation then turns on whether the police acted in bad faith.

{¶ 116} Griffin argues that the police did act in bad faith, pointing to the fact that certain police officers knew that he had been arrested and detained yet other officers sent notice of the vehicle's potential destruction to his home address (as opposed to the detention center). He further points out that police would have known that the defense had not examined the vehicle at the time of its destruction.

{¶ 117} This court does not condone the State's destruction of potentially useful evidence in this case. But after a careful review, we conclude that the destruction was the result of negligence, not bad faith. In simple terms, it seems that the left hand just did not know what the right hand was doing.

{¶ 118} Detectives informed the impound lot that they were through searching the vehicle, but the detectives did not know the vehicle was slated to be destroyed. The impound lot, for its part, did not ask the detectives whether Griffin

was detained at the Cuyahoga County Corrections Center when it mailed the notice to his last known address. They did not check the court's docket to determine whether he was detained or if bond had been posted.

{¶ 119} The evidence reflects that police followed internal departmental protocols before destroying the vehicle. They waited a week after the scheduled destruction date as a courtesy to allow Griffin or the financial institution to make contact. There were no documented inquiries about the vehicle from anyone outside the police department before the vehicle was destroyed even though police had the vehicle in their lot for three and a half months. Officers thoroughly searched the vehicle for bullets and thoroughly documented the vehicle's condition through photography. While these steps admittedly did not preserve the defense's ability to use trajectory rods in the way it wanted, these circumstances are not indicative of bad faith.

{¶ 120} For example, there was no evidence that the destruction occurred in violation of a departmental policy. *Compare State v. Durnwald*, 2005-Ohio-4867, ¶ 36 (6th Dist.) (videotape erasure, while not intentional, resulted from "complete and utter failure to safeguard evidence" and violated departmental policy to preserve such videotapes); *In re J.B.*, 2017-Ohio-406, ¶ 38–39 (6th Dist.). Nor was there evidence presented in this case that the Cleveland Police Department has a "continuing cavalier attitude" toward the preservation of vehicles. *Compare Durnwald; In re J.B.* There was no attempt to hide or cover up the circumstances of the vehicle's destruction. *Compare State v. Newton*, 2018-Ohio-1392, ¶ 22 (8th

Dist.) (detective denied the existence of a diagram the detective had lost and lied about what the detective told a prosecutor about the situation).

{¶ 121} Because the State's destruction of Griffin's BMW was the result of negligence and not bad faith, the trial court did not err in denying his motion to dismiss the indictment and we, therefore, overrule Griffin's first assignment of error.

B. Assignment of Error # 2

{¶ 122} Griffin contends that his convictions for murder and felonious assault were against the manifest weight of the evidence. Specifically, he contends the jury clearly lost its way when it found him guilty because the evidence shows he was acting in self-defense.

{¶ 123} On the affirmative defense of self-defense, the defendant bears the burden of production and the State bears the burden of persuasion. *State v. Messenger*, 2022-Ohio-4562, ¶ 19; *State v. Giglio*, 2023-Ohio-2178, ¶ 16 (8th Dist.). "To satisfy this burden . . . the state must disprove at least one of the elements of self-defense." *State v. Ratliff*, 2023-Ohio-1970, ¶ 27. In other words, the State must demonstrate that (1) the defendant was at fault in creating the situation giving rise to the affray; (2) the defendant lacked a bona fide belief that she was in imminent danger of death or great bodily harm or that another means of escape from such danger existed negating the need for the use of force or (3) that the defendant violated a duty to retreat or avoid the danger. *See State v. Scales*, 2024-Ohio-2171, ¶ 30 (8th Dist.).

{¶ 124} This court has recognized that "[s]elf-defense claims are generally an issue of credibility" for the trier of fact to decide. *State v. Walker*, 2021-Ohio-207, ¶ 13 (8th Dist.). We review challenges to the State's burden of persuasion on self-defense under the manifest-weight standard. *State v. Azali*, 2023-Ohio-4643, ¶ 22 (8th Dist.).

{¶ 125} 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 *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997); *State v. Bowden*, 2009-Ohio-3598, ¶ 13 (8th Dist.).

{¶ 126} 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*.

{¶ 127} 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.).

{¶ 128} A person commits murder by purposely causing the death of another. R.C. 2903.02(A). A person commits felonious assault by knowingly causing or attempting to cause physical harm to another by means of a deadly weapon. R.C. 2903.11(A)(2).

{¶ 129} Griffin's self-defense argument relies on the forensic pathologist's conclusion that either of the two gunshot wounds inflicted to Williams would have been fatal. Griffin extrapolates that Williams would not have been able to shoot back if Griffin had shot first and, therefore, argues that Williams shot first. If that is the case, he says, then Griffin merely fired back in self-defense.

{¶ 130} The State responds that even if Williams shot first, Griffin started the affray and, therefore, cannot rely upon self-defense. The State further argues that the evidence does not support the primary assumption upon which Griffin's argument is based, namely that Griffin only fired two shots, both of which struck Williams.

{¶ 131} After carefully reviewing the record, we find that this is not an exceptional case in which the jury clearly lost its way in finding self-defense

inapplicable under the circumstances. Whether self-defense applied was an issue of credibility for the factfinder to decide.

{¶ 132} Here, multiple witnesses corroborated that Griffin arrived on Svec Avenue, forced Scott from the vehicle and then knocked him to the ground. It was also undisputed that Scott was not fighting back. While Hurt denied seeing a firearm in Griffin's hands, an independent witness — the next-door neighbor — confirmed Isaacs' account that Griffin was threatening Scott with a firearm.

{¶ 133} Moreover, the State is correct that the forensic evidence contradicts the claim that Griffin only shot twice. First, in addition to the two penetrating bullet wounds to Williams' body, there appeared to be a graze wound from a third bullet at his clavicle. Second, in addition to the two bullets recovered from Williams' body (one at autopsy and the other at the hospital), a third .40-caliber bullet was recovered in fragments from inside the Svec Avenue home. That bullet corroborates Isaacs' account that Griffin fired more than twice.

{¶ 134} Therefore, the weight of the evidence does not weigh heavily against the finding that Griffin shot first or, at the very least, started and escalated the affray that led directly to the fatal shooting. The jury's finding that Griffin did not act in self-defense was not against the manifest weight of the evidence and Griffin's second assignment of error is overruled.

C. Assignment of Error # 3

{¶ 135} Griffin contends that the trial court should have declared a mistrial when the State, in a power point demonstration during closing argument, an

incorrect statement of the law as it applies to self-defense and, in so doing, which amounted to prosecutorial misconduct

{¶ 136} The decision whether to grant or deny a motion for mistrial lies within the discretion of the trial court and will not be reversed absent a showing of an abuse of discretion. *State v. Willis*, 2014-Ohio-114, ¶ 36 (8th Dist.), citing *State v. Garner*, 74 Ohio St.3d 49, 59 (1995).

{¶ 137} A court abuses its discretion when it exercises its judgment in an unwarranted way with respect to a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *See, e.g.*, *State v. Musleh*, 2017-Ohio-8166, ¶ 36 (8th Dist.), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "An abuse of discretion also occurs when a court '"applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact."'" *Cleveland v. Wanton*, 2021-Ohio-1951, ¶ 8 (8th Dist.), quoting, *S. Euclid v. Datillo*, 2020-Ohio-4999, ¶ 8 (8th Dist.), quoting *Thomas v. Cleveland*, 2008-Ohio-1720, ¶ 15 (8th Dist.).

{¶ 138} "A mistrial should not be ordered in a criminal case merely because some error or irregularity has intervened, unless the substantial rights of the accused or the prosecution are adversely affected . . . ." *State v. Reynolds*, 49 Ohio App.3d 27 (2d Dist. 1988), paragraph two of the syllabus. The granting of a mistrial is necessary only when "a fair trial is no longer possible." *State v. Franklin*, 62 Ohio St.3d 118, 127 (1991).

{¶ 139} An appellate court reviews an allegation of prosecutorial misconduct during closing arguments by asking "'whether the remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant.'" *State v. McAlpin*, 2022-Ohio-1567, ¶ 156, quoting *State v. Smith*, 14 Ohio St.3d 13, 14 (1984). "'[T]he touchstone of the analysis "is the fairness of the trial, not the culpability of the prosecutor."'" *Id.*, quoting *State v. Leonard*, 2004-Ohio-6235, ¶ 155, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982).

{¶ 140} After a careful review, we find no abuse of discretion in the trial court's denial of Griffin's motion because we cannot say that the prosecutor's remarks and slides prejudicially affected Griffin's substantial rights. The trial court had correctly instructed the jury on the State's burden of proof with respect to self-defense prior to closing arguments which are not evidence. A jury is presumed to follow the instructions given to it by a trial court. *E.g.*, *Garner* at 59. Moreover, there was overwhelming evidence that self-defense did not apply in this case because Griffin started the affray and threatened Scott with a firearm immediately before the shooting commenced. Finally, the court sustained Griffin's objections during closing argument and twice brought the prosecutor to a sidebar, after which the State itself clearly and correctly stated the State's burden of proof to the jury. Under these circumstances, we cannot say that it was an abuse of discretion for the trial court to have determined that any error in the prosecutor's argument was adequately addressed and that any error did not prejudice Griffin's right to a fair trial.

{¶ 141} Accordingly, we overrule Griffin's third assignment of error.

{¶ 142} Having overruled Griffin'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 appeal 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, JUDGE

LISA B. FORBES, J., CONCURS;
KATHLEEN ANN KEOUGH, A.J., CONCURS (WITH SEPARATE OPINION)

KATHLEEN ANN KEOUGH, A.J., CONCURRING:

{¶ 143} I fully concur with the majority opinion but write separately to express my concern about the State's destruction of Griffin's vehicle before Griffin's defense team had the opportunity to inspect and review the vehicle following the State's detectives' processing and analysis.

{¶ 144} Before the vehicle was destroyed in August 2022, Giffin filed a general discovery request in May 2022, that demanded the State to preserve and make available all evidence it intended to use in its prosecution. Although the State had possession of Griffin's vehicle, it did not supplement its response to discovery to include the vehicle until July 11, 2022, which was three days prior to when detectives actually processed the vehicle by searching for fingerprints and DNA and taking photographs. Griffin's vehicle was destroyed only one month later.

{¶ 145} Although the protocol and policies may have been followed in the destruction of a typical unclaimed, impounded vehicle, this situation was not typical, but rather the vehicle was impounded as a result of an arrest of a person of interest in a murder. The impound lot where police towed Griffin's vehicle was not privately owned; the City owns the lot and Griffin's vehicle was specifically towed and held in a garage designated for vehicles requiring further evidence processing. In fact, Sergeant Ciritovic testified that she conferred with Homicide Detective Schultz about the circumstances of the vehicle, including the crime and evidence they were looking to obtain. Accordingly, all parties knew that this vehicle was towed in connection with a homicide. In fact, it was a tow incident to Griffin's arrest. But, as the lead opinion noted, "[T]he left hand just did not know what the right hand was doing."

{¶ 146} Situations like this are what undermine the confidence in the criminal justice system. Appearances of purposely withholding or destruction of evidence must be avoided, especially when a demand for discovery has been

submitted that requests preservation of evidence. It should be fairly easy to develop a system that identifies vehicles connected to ongoing criminal investigations and subject to preservation of evidence requests in pending criminal cases. It could be as easy as contacting the prosecutor handling the case to determine whether the vehicle is necessary for further investigation and evaluation, especially because the report or evidence obtained from the initial processing may reveal unsuspected information. This process could be beneficial to all parties, but it adds a layer of confidence and good faith with the State.

{¶ 147} My criticism of the procedures followed in this case is not without recognizing that the murder occurred in October 2021, and the vehicle was not recovered until Griffin's arrest in April 2022, thus certain evidence may have been tainted or removed in the interim. Additionally, once the State supplemented its discovery response, Griffin did not file any specific demand requesting preservation of the vehicle until his defense team could do its own inspection. Moreover, I note that Griffin's motion to dismiss did not alternatively seek suppression of the evidence obtained in processing Griffin's vehicle, which could have been a less restrictive sanction for the destruction of evidence. Finally, Giffin's counsel had the opportunity to cross-examine Detective Schultz during trial about the destruction of the vehicle or the delay in recovery the vehicle, in an attempt to cast reasonable doubt, impeach credibility, or criticize the investigation. Accordingly, I find that there are procedures in place for defendants who find themselves in similar circumstances.