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SLIP OPINION NO. 2026-OHIO-3771

THE STATE OF OHIO, APPELLANT, v. BRADLEY, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Bradley*, Slip Opinion No. 2026-Ohio-3771.]

Criminal law—Crim.R. 52(B)—For an error to be plain error, it must be a clear error under current law—The standard for whether an error affects a defendant’s substantial rights is whether the outcome would have been different, not whether it may have been different—Court of appeals erred in determining that trial court’s failure to give an unrequested jury instruction on transferred self-defense was plain error because current law did not clearly require the instruction and defendant failed to demonstrate that trial’s outcome would have been different had trial court instructed jury on transferred self-defense—Judgment reversed and cause remanded.

(No. 2024-1715—Submitted November 19, 2025—Decided September 29, 2026.)

APPEAL from the Court of Appeals for Belmont County,

No. 24 BE 0003, 2024-Ohio-5225.

DETERS, J., authored the opinion of the court, which KENNEDY, C.J., and FISCHER, DEWINE, HAWKINS, and SHANAHAN, JJ., joined. BRUNNER, J., dissented, with an opinion.

DETERS, J.

{¶ 1} Timothy Damien Bradley was charged with one count of felonious assault and two counts of discharging a firearm into a habitation without privilege to do so. The State and Bradley agreed that the trial court should instruct the jury on self-defense. The trial court gave the agreed on instruction at the conclusion of the trial.

{¶ 2} After Bradley was acquitted of felonious assault but convicted on both counts of discharging a firearm into a habitation, he appealed to the Seventh District Court of Appeals. He argued that the trial court erred by not giving an instruction on transferred self-defense, even though he had not asked for such an instruction. In Bradley's view, in addition to the self-defense instruction that the judge provided, the court should have instructed the jury that the privilege of self-defense transferred to the discharging-a-firearm-into-a-habitation offenses, which required the State to prove that Bradley acted *without privilege*.

{¶ 3} The problem is that Bradley didn't object to the trial court's failure to give the instruction on transferred self-defense, so he was limited to arguing plain error on appeal. That is, he had to demonstrate that there was an error, that the error was plain, and that the error affected his substantial rights. The Seventh District found that Bradley established plain error.

{¶ 4} We disagree. We conclude that Bradley did not establish that the trial court's failure to give the unrequested instruction on transferred self-defense was plain error. The error was not plain because current law did not clearly require the instruction. And Bradley did not demonstrate that the alleged error affected his substantial rights. We therefore reverse the Seventh District's judgment and

remand the case to that court for consideration of Bradley's challenge to his sentence.

I. BACKGROUND

{¶ 5} Bradley was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(2) and two counts of discharging a firearm into an occupied structure of habitation in violation of R.C. 2923.161(A)(1). The charges relate to an incident during which Bradley shot at Zachary Burch while both men were inside a house Bradley owned. Bradley fired six shots, hitting Burch and at least one other residence across the street from Bradley's house.

{¶ 6} The case was tried to a jury. The State presented evidence that Bradley had employed Burch as a contractor for projects at Bradley's house. On the day of the shooting, Bradley had fired Burch by text message. When Burch went to Bradley's house to retrieve tools he had left behind, the two men engaged in an argument. Burch took an air compressor from the house to his car and then returned to the house to grab more tools. When Burch entered Bradley's house the second time, Bradley shot Burch, hitting him five times, and Burch ran from the house. Bradley followed, but he did not fire any more shots. Burch suffered two gunshot wounds in his shoulder, one in his chest, one on the back of his right arm, and one near his right armpit. The State also alleged that bullets from Bradley's gun hit two residences. To prove that allegation, the State presented testimony from a neighbor, Jessi House, who testified that a bullet hit her house. No resident from the second house allegedly hit by bullets from Bradley's gun testified.

{¶ 7} In his defense, Bradley claimed that Burch was armed when he entered the house and that Burch had made a motion with his arms indicating that he was going to grab his gun. Although Burch did have a gun, a video recording from a neighbor's security cameras showed that Burch did not touch it during the incident. Audio from the recording also established that Burch threatened Bradley during the encounter. House testified that she witnessed the aftermath of the

shooting: Bradley standing in the street holding a gun and Burch running to a neighbor's porch two houses away.

{¶ 8} The trial court's instructions to the jury included an instruction on self-defense that Bradley and the State had agreed on before trial:

Self-defense: The defendant claims to have acted in self-defense to all three of these charges. The defendant is allowed to use deadly force in self-defense. The State must prove beyond a reasonable doubt that the defendant, when using deadly force, did not act in self-defense. The defendant is presumed to have acted in self-defense when this occurred in his residence.

The trial court also defined "privilege": "That's an immunity, license or right conferred by law, bestowed by express or implied grant, arising out of status, position, office or relationship, and growing out of necessity."

{¶ 9} During closing arguments, Bradley's counsel argued that if the jury believed Bradley acted in self-defense, then he had the privilege to shoot into the residences:

They charged my client with shooting into a habitation, right? One of the elements of that offense, though, is "without privilege." If you believe that he was acting in self-defense or that they failed to prove that he wasn't, then he had the privilege to shoot into the habitation.

{¶ 10} The jury found Bradley not guilty of felonious assault but guilty on both counts of improperly discharging a firearm into a habitation. After the verdict was read, Bradley moved for a mistrial. He maintained that to be found guilty of

improperly discharging a firearm into a habitation, he had to have acted without privilege and that self-defense is a privilege. In his view, because the jury found him not guilty of felonious assault, it must have found that he had acted in self-defense. The trial court requested briefing on the issue, during which Bradley moved for a new trial. The trial court overruled the motion and subsequently sentenced Bradley on two counts of improperly discharging a firearm into a habitation.

{¶ 11} Bradley appealed to the Seventh District, arguing that his convictions were not supported by sufficient evidence, that his convictions were against the manifest weight of the evidence, that the trial court plainly erred in not instructing the jury that his self-defense claim transferred to the two counts of improperly discharging a firearm, that the jury's verdicts were inconsistent, and that the trial court erred when it sentenced him to more than the minimum sentence allowed for his offenses. 2024-Ohio-5225, ¶ 2 (7th Dist.). The Seventh District agreed that one of Bradley's convictions for improperly discharging a firearm into a habitation was based on insufficient evidence—the one related to the house for which no witness testified—so it vacated that conviction. *Id.* at ¶ 84, 86. The court concluded that the other conviction for improperly discharging a firearm was supported by sufficient evidence and was not against the manifest weight of the evidence. *Id.* at ¶ 92. Nonetheless, the court reversed the conviction on that count because it concluded that the trial court had plainly erred in not giving an instruction on “transferred self-defense.” *Id.* at ¶ 94, 116. Finally, the court determined that Bradley's argument regarding inconsistent verdicts lacked merit and that, given the disposition of the other assignments of error, Bradley's challenge to his sentence was moot. *Id.* at ¶ 128-129, 131. The case was remanded to the trial court for retrial of one count of improperly discharging a firearm into a habitation. *Id.* at ¶ 133.

{¶ 12} We accepted the State’s appeal in which it argues that the trial court did not plainly err when it did not give an instruction on transferred self-defense. *See* 2025-Ohio-1090.

II. ANALYSIS

A. *Bradley forfeited all but plain error*

{¶ 13} The gist of Bradley’s argument to the Seventh District was that the jury should have been instructed that self-defense was privilege and that if Bradley was entitled to act in self-defense against Burch, then the privilege of self-defense transferred to discharging a firearm into a habitation. *See* 2024-Ohio-5225 at ¶ 100-101 (7th Dist.). And, according to Bradley, since the jury had found him not guilty of felonious assault, it had credited his self-defense claim. *Id.* at ¶ 87. Thus, Bradley argued, the jury should not have found him guilty of discharging a firearm into a habitation. But Bradley never requested an instruction that his self-defense privilege transferred to the other charged offenses, so he forfeited all but plain-error review. *See* Crim.R. 30(A) (“On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection.”); *see also State v. Long*, 53 Ohio St.2d 91, 96 (1978).

{¶ 14} Under Crim.R. 52(B), “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Courts should “notice plain error ‘with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.’” *State v. Barnes*, 2002-Ohio-68, ¶ 21, quoting *Long* at paragraph three of the syllabus.

{¶ 15} We have explained that there are three parts to plain-error review: (1) there must be an error, (2) the error must be plain, and (3) the error must affect “substantial rights.” *Id.* at ¶ 20. “To be ‘plain’ within the meaning of Crim.R. 52(B), an error must be an ‘obvious’ defect in the trial proceedings.” *Id.* In explaining what it means for an error to be “plain” in terms of the Federal Rules of

Criminal Procedure, the United States Supreme Court has instructed that “[a]t a minimum, [a] court of appeals cannot correct an error pursuant to [Fed.R.Crim.P.] 52(b) unless the error is clear under current law.” *United States v. Olano*, 507 U.S. 725, 734 (1993), *superseded on other grounds by rule as recognized in United States v. Kelly*, 875 F.3d 781 (5th Cir. 2017). As for the third part of plain-error review, an appellate court must consider whether the error affected the outcome of the trial. *Barnes* at ¶ 20. Even if the three parts of plain-error review are satisfied, reversal is not guaranteed. Rather, relief is left to the discretion of the reviewing court. *Barnes* at ¶ 21.

{¶ 16} In conducting its plain-error review, the Seventh District strayed from the framework we have provided. The court of appeals concluded that the trial court erred because it did not instruct the jury how self-defense against an aggressor could justify discharging a firearm into a habitation. 2024-Ohio-5225 at ¶ 114 (7th Dist.). The court of appeals also determined that the instructions were inadequate because “the jury was not specifically advised that self-defense constitutes a *privilege*” as that word is used in the charging statute. (Emphasis added.) *Id.* at ¶ 113; *see also* R.C. 2923.161(A)(1) (prohibiting discharging a firearm into a habitation *without privilege to do so*).

{¶ 17} The Seventh District was mistaken in two respects. First, the court of appeals did not properly address the second part of plain-error review: whether the trial court’s alleged error was a plain error, i.e., a clear error under current law. Because, as the court of appeals acknowledged, this court and the Seventh District have never addressed whether the self-defense privilege transfers to other offenses, the court of appeals should have determined that any error was not plain; instead, it turned to the question whether the error affected Bradley’s substantial rights.

{¶ 18} Second, the Seventh District did not use the correct standard when it considered whether the error affected Bradley’s substantial rights. Despite acknowledging that “[p]lain error review requires the [party claiming error] to show

the outcome would have been different absent the error,” the court of appeals employed a more lenient standard, concluding that “[a]rguably, if the instructions were clearer in this regard, the outcome of the trial *may* have been different.” (Emphasis added.) 2024-Ohio-5225 at ¶ 110-111 (7th Dist.). As we will discuss, the Seventh District’s conclusion that the trial court plainly erred was incorrect.

B. Even if there was an error, it was not plain

{¶ 19} To succeed under Crim.R. 52(B), Bradley had the burden of demonstrating that the alleged error on the part of the trial court was plain. *See Barnes*, 2002-Ohio-68, at ¶ 20; *see also Olano*, 507 U.S. at 734. Put another way, Bradley had to show that under current law, the facts of his case required the trial court to instruct the jury that if it found that Bradley had acted in self-defense with respect to the felonious-assault charge, his privilege of self-defense transferred to the charges of discharging a firearm into a habitation without privilege. Bradley argues that the trial court’s omission of a transferred-self-defense instruction was a plain error because that doctrine has been recognized and applied in Ohio for over 50 years.

{¶ 20} To be sure, “the doctrine of transferred intent is firmly rooted in Ohio law.” *State v. Sowell*, 39 Ohio St.3d 322, 332 (1988). Thus, “[i]f one purposely causes the death of another and the death is the result of a scheme designed to implement the calculated decision to kill someone other than the victim, the offender is guilty of aggravated murder in violation of R.C. 2903.01(A).” *State v. Solomon*, 66 Ohio St.2d 214 (1981), paragraph one of the syllabus. But this court has never decided whether the doctrine applies to transfer a defendant’s self-defense privilege to other offenses.

{¶ 21} Absent caselaw from this court regarding transferred self-defense, Bradley directs us to the First District Court of Appeals’ decision in *State v. Clifton*, 32 Ohio App.2d 284 (1st Dist. 1972). In that case, the defendant fired his gun after being hit by one person, but the gunshot missed the alleged aggressor and hit

another person, who later died. The defendant asked for a self-defense instruction. The trial court instructed the jury on self-defense but did not instruct that proof of self-defense required acquittal even though the victim was not the alleged attacker.

{¶ 22} The First District found that omission to be error, grounding its reasoning in the mens rea required to commit first-degree manslaughter. *Id.* at 286-287. The court explained that if the defendant did not have the mens rea required to be convicted of shooting his attacker, then he did not have the mens rea required to be convicted of shooting the victim. *Id.* But self-defense does not negate a defendant's mens rea. Rather, it provides an affirmative defense to the offense. *See State v. Poole*, 33 Ohio St.2d 18, 19-20 (1973). Regardless of whether *Clifton* was correctly decided, one court of appeals' conclusion that an instruction on transferred self-defense was required does not render the failure to give such an instruction a clear error under current law.

{¶ 23} Other cases cited by the Seventh District get us no closer to determining whether the failure to give an instruction regarding transferred self-defense would be error, let alone a plain error. For example, in *State v. Vinson*, 2022-Ohio-2031, ¶ 40 (10th Dist.), the Tenth District Court of Appeals assumed without deciding that the failure to give a transferred-self-defense instruction was error and went on to determine that in any event, the defendant was not prejudiced by the failure to give such an instruction, because the jury did not accept the defendant's underlying self-defense claim, so there was no self-defense to transfer. Likewise, the Eighth District Court of Appeals, after noting that "it [has] not [been] definitively established in [that] district that the doctrine of transferred intent applies to self-defense," declined to find plain error when the trial court had not provided the instruction, because the defendant could not prove that the outcome would have been different since the jury did not believe his self-defense claim. *State v. Campbell*, 2024-Ohio-1693, ¶ 47 (8th Dist.). In short, other than the First

District’s decision in *Clifton*, Bradley points to no decision in this State that has addressed head-on whether an instruction on transferred self-defense was required.

{¶ 24} Bradley spends a portion of his merit brief to this court explaining why the privilege of self-defense should transfer to offenses that require the offender to act without privilege. But, even if we were to adopt this doctrine in the future, we cannot say that the trial court’s failure to give the instruction sua sponte in this case was a clear error under current law.

C. Even if there was a plain error, Bradley did not prove that the error was prejudicial to his substantial rights

{¶ 25} As we have noted, the court of appeals failed to properly consider whether the trial court committed a clear error under current law by not giving an instruction on transferred self-defense and instead focused on whether the outcome would have been different had the instruction been given. The court of appeals agreed with Bradley’s argument that the jury must have found Bradley to have acted in self-defense because it found him not guilty of felonious assault. 2024-Ohio-5225 at ¶ 116 (7th Dist.). Bradley makes the same argument before this court, claiming that if the jury had been properly instructed that self-defense was a privilege that transferred to the other offense, it would have found him not guilty of discharging a firearm into a habitation.

{¶ 26} The problem with that argument is that we have no way of knowing why the jury found the way that it did. “[J]ury verdicts must be accepted as they stand. To do otherwise is too speculative.” *State v. Lovejoy*, 1997-Ohio-371, ¶ 17. And as acknowledged by the Seventh District, we have held that “[t]he several counts of an indictment containing more than one count are not interdependent and an inconsistency in a verdict does not arise out of inconsistent responses to different counts, but only arises out of inconsistent responses to the same count.” 2024-Ohio-5225 at ¶ 120 (7th Dist.), quoting *State v. Brown*, 12 Ohio St.3d 147 (1984), syllabus.

{¶ 27} Even if the reason that the jury found Bradley not guilty of felonious assault was because it believed his self-defense claim, the appellate court’s concern that the jury was confused is not supported by the record. Although the trial court instructed the jurors that self-defense could apply to all the offenses, *see id.* at ¶ 58, the Seventh District speculated that “the jurors, as laypersons, may not have comprehended” how Bradley’s claim of self-defense could apply to all charges, and the court concluded that an instruction on transferred intent “would have added vital clarity,” *id.* at ¶ 111. But Bradley’s counsel expressly argued in closing that if Bradley had acted in self-defense, he “had the privilege” to shoot into the houses.

{¶ 28} The court of appeals applied the wrong standard when it determined that the outcome *may* have been different had the trial court instructed the jury on transferred self-defense. And a court of appeals has no discretion to use the wrong standard when performing its plain-error analysis. *See Barnes*, 2002-Ohio-68, ¶ 23 (“By failing to conduct the proper plain-error analysis required by Crim.R. 52(B), the court of appeals erred as a matter of law in reversing Barnes’s conviction for felonious assault.”). We conclude that Bradley did not meet his burden to show that the outcome *would* have been different.

III. CONCLUSION

{¶ 29} Bradley did not meet his burden to show that the trial court plainly erred when it failed to sua sponte give an instruction regarding transferred self-defense, because the error, if any, was not a clear error under current law and because he did not demonstrate that the outcome of his trial would have been different had such an instruction been given. We therefore reverse the judgment of the Seventh District Court of Appeals and remand the case to that court for consideration of Bradley’s fifth assignment of error.

Judgment reversed
and cause remanded.

BRUNNER, J., dissenting.

{¶ 30} I respectfully dissent from the majority opinion’s conclusion that appellee, Timothy Damien Bradley, did not establish that the jury instructions provided in this case were plain error. Bradley could be convicted of discharging his firearm into his neighbor’s home under R.C. 2923.161(A)(1) only if he was “without privilege to do so.” Self-defense is a privilege and a right under the law. *State v. Miree*, 2024-Ohio-5714, ¶ 12. The jury should have been instructed that self-defense is a privilege for purposes of R.C. 2923.161(A)(1). *See State v. Comen*, 50 Ohio St.3d 206 (1990), paragraph two of the syllabus.

{¶ 31} The error in the jury instructions was obvious. *See State v. Barnes*, 2002-Ohio-68, ¶ 20, quoting *State v. Sanders*, 2001-Ohio-189, ¶ 82 (“To be ‘plain’ . . . an error must be an ‘obvious’ defect in the trial proceedings.”). The parties agreed that the evidence supported a self-defense instruction with respect to Bradley’s shooting of the victim. And the jury found Bradley not guilty of felonious assault related to his shooting of the victim. However, the trial court did not instruct the jury that if it found that Bradley had acted in self-defense, then Bradley had a privilege under R.C. 2923.161(A)(1).

{¶ 32} Contrary to the State’s framing of the issue, and as suggested in the cases discussed in Part II(B) of the majority opinion, this case does not implicate a *transfer* of intent or justification from one offense to another. It seems reasonable—or perhaps obvious—that if we accept the theory of transferred self-defense for the accidental killing of another person, *see State v. Clifton*, 32 Ohio App.2d 284 (1st Dist. 1972), paragraph one of the syllabus, then we would accept a theory of transferred self-defense for the accidental shooting of property. Perhaps such an instruction was warranted here, but the trial court’s failure to give a transferred self-defense instruction is not what caused plain error. The statute under which Bradley was convicted already contains a privilege exception. If the privilege exists, then the exception applies and there is no need for anything to

transfer. The plain error occurred when the trial court failed to explain to the jury that self-defense is a privilege under R.C. 2923.161(A)(1).

{¶ 33} The majority opinion is also wrong in stating that the Seventh District Court of Appeals did not set forth the correct plain error standard. Although the Seventh District began its analysis by cautiously noting that “the outcome of the trial *may* have been different” had clearer instructions been provided to the jury (emphasis added), 2024-Ohio-5225, ¶ 111 (7th Dist.), it ultimately determined that a proper “instruction *would have* provided the legal link to acquit [Bradley]” (emphasis added), *id.* at ¶ 115. I agree with the Seventh District that the trial court’s plain error affected the outcome of Bradley’s trial and therefore affected a substantial right. *See State v. Long*, 53 Ohio St.2d 91, 97 (1978) (a jury instruction violative of a statute does not constitute plain error unless, but for the error, the outcome of the trial clearly would have been otherwise).

{¶ 34} The State’s appeal does not warrant our intrusion into the Seventh District’s discretion to recognize that plain error occurred in Bradley’s trial, affecting its outcome, and thus, Bradley’s substantial rights. *See* Crim.R. 52(B). I therefore dissent.

J. Kevin Flanagan, Belmont County Prosecuting Attorney, and Jacob A. Manning, Assistant Prosecuting Attorney, for appellant.

Aaron J. Brockler, for appellee.

Marein & Bradley, L.L.C., John T. Martin, and Steven L. Bradley, urging affirmance for amicus curiae, Ohio Association of Criminal Defense Lawyers.
