[Cite as *State v. Keith*, 2026-Ohio-4507.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO	:	APPEAL NO. C-250623 TRIAL NO. B-2303931
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
CLARENCE KEITH	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed, and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 11/13/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By:_____
Administrative Judge

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STATE OF OHIO	:	APPEAL NO. C-250623 TRIAL NO. B-2303931
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
CLARENCE KEITH	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed and Cause Remanded

Date of Judgment Entry on Appeal: November 13, 2026

Connie Pillich, Hamilton County Prosecuting Attorney, and *Philip R. Cummings,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Roger W. Kirk, for Defendant-Appellant.

CROUSE, Judge.

{¶1} Out of love for his daughter, Clarence Keith made a terrible decision. He drove from Chicago to Cincinnati to be with his daughter, N.K., who was going through a heated breakup with her boyfriend, T.B. Shortly after T.B. arrived at N.K.'s house to retrieve some of his things, Keith shot and injured T.B.

{¶2} On August 22, 2023, the Hamilton County Grand Jury issued a two-count indictment against Keith. Count 1 charged Keith with felonious assault under 2903.11(A)(1). Count 2 charged Keith with felonious assault under 2903.11(A)(2). Both counts included two firearm specifications.

{¶3} Keith argued at trial that he acted in self-defense, but a jury rejected his defense and returned a guilty verdict on both felonious assault counts. At sentencing, the trial court merged both counts and all gun specifications. Keith was sentenced to an aggregate prison term of five to six years.

{¶4} On appeal, Keith raises three assignments of error. He argues that the jury verdict was against the manifest weight of the evidence, that the sentencing court failed to follow the Reagan Tokes Law, and that his counsel was ineffective. We overrule his first and third assignments of error. We sustain his second assignment of error and remand the cause to the trial court to comply with the Reagan Tokes Law.

I. Evidence at Trial

{¶5} Defendant Keith's daughter, N.K., was in the midst of a nasty breakup with her boyfriend, T.B. On August 12, 2023, N.K. called her father and told him about her breakup. She told him that T.B. was coming to her house to retrieve his belongings. Keith stated that N.K. sounded very nervous and scared about the situation. Keith then drove from his home in Chicago to N.K.'s home in Colerain without ever hanging up. Keith brought his firearm with him, which he was licensed to possess, because he

believed his daughter was "in harm's way." Once Keith arrived in Cincinnati, he parked about a block and a half from N.K.'s house so his car would not be seen.

{¶6} N.K. had packed all of T.B.'s belongings—"everything, even the toothbrush"—and placed them in the garage. Keith was sitting at the top of the stairs to the second floor of N.K.'s house when T.B. arrived to retrieve his things. T.B. came with a woman and two other men: his sister, his cousin, and his good friend, T.P. The men were armed. Keith was not visible to T.B. when T.B. entered the house, nor did T.B. know that Keith was inside the house.

{¶7} N.K. told T.B. that all of his things were in the garage. Nevertheless, T.B. walked past N.K. to go upstairs to check for any items he may have left. Once on the staircase, T.B. saw Keith sitting with his gun visible.

{¶8} T.B. testified that it "wasn't long" after he saw Keith that Keith fired a shot at him. T.B. immediately retreated, but as he did so, he attempted to draw his weapon. Keith shot T.B. a second time in the back, which collapsed his lung. T.B. testified that Keith kicked him down the rest of the stairs, causing him to drop his gun. While he was lying at the bottom of the stairs, Keith stood over him and yelled that he should kill him. T.B. ran outside and fell to the ground. He testified that once he was outside and lying on the ground, Keith shot him two more times.

{¶9} T.P., T.B.'s friend, testified that he was armed when he accompanied T.B. to N.K.'s house. While T.B. was inside, T.P. was trying to park his car in front of the house. When he realized something had gone wrong inside the house, T.P. got out of his car with his weapon. T.P. saw Keith standing over T.B. outside of the house with a handgun pointed at him. He testified that Keith fired two shots in their direction.

{¶10} N.K.'s Ring doorbell camera footage was admitted into evidence. The camera was positioned on the front door, so it does not show what happened inside

the house or in the doorway. When T.B. enters the frame, he falls backward onto his rear on the steps leading to the front door. He has no weapon in his hands. Keith's gun is in the frame, pointed at him. Two gunshots are audible, both within one second of the other. Keith's gun visibly recoils twice, and the gun's slide can be seen moving twice to indicate two shots being fired from his gun. At the exact same time, T.P. can be seen firing his weapon toward Keith and T.B. When Keith's weapon discharges, T.B. rolls backward over his left shoulder and crawls down the steps in front of the house. A puddle of blood can be seen near T.B.

{¶11} Keith testified in his own defense. He told the jury that he and T.B. briefly looked at each other, and then T.B. reached for his gun, which was tucked away in his waistband, and drew it. Keith, who feared for his life, immediately drew his weapon and fired at T.B., hitting T.B. in the arm. After that, T.B. retreated down the stairs and, while doing so, pointed his gun behind him at Keith. Keith then shot a second time, hitting T.B. in the back. All of this happened in seconds. Keith then raced to the bottom of the stairs and pointed his gun at a still-armed T.B.'s head and disarmed him. Keith shoved T.B. outside. Keith further testified that once outside, more shots were fired, this time by T.P. Keith testified that he tried to fire his gun at T.P. outside but could not because it jammed. He denied shooting his weapon outside and further denied taking any shots (or even pointing his gun) at T.B. once they were outside. It was Keith's position that T.B.'s third and fourth gunshot wounds came from T.P.'s gun.

{¶12} When the police arrived, Keith's gun was on the counter, unloaded. He surrendered to the police without issue. The police recovered one shell casing from the porch (where Keith was standing) and one shell casing from the street (where T.P. was standing).

II. Analysis

A. Manifest Weight of the Evidence

{¶13} Keith's manifest-weight argument centers on his self-defense argument. Specifically, he argues that the jury's rejection of his self-defense claim was against the manifest weight of the evidence. We disagree.

{¶14} Under R.C. 2901.05(B)(1), a criminal defendant asserting self-defense bears an initial burden of production to show that "there is evidence presented that tends to support that the accused person used the force in self-defense." This burden requires the defendant to provide "legally sufficient evidence" for each element of self-defense. *State v. Messenger*, 2022-Ohio-4562, ¶ 25. This means the evidence a defendant presents, and any reasonable inferences drawn from it, "would allow a rational trier of fact to find all the elements of a self-defense claim when viewed in the light most favorable to the defendant." *Id.* This burden is similar to the standard for judging the sufficiency of the State's evidence in a criminal conviction. *State v. Corrado*, 2024-Ohio-2575, ¶ 12 (1st Dist.). Once a criminal defendant meets this initial burden, the burden shifts to the State to disprove the self-defense claim. *State v. Smith*, 2020-Ohio-4976, ¶ 49 (1st Dist.). Just as the State must prove all elements of an offense beyond a reasonable doubt, so too must the State prove a lack of self-defense beyond a reasonable doubt. R.C. 2901.05(B)(1); *Messenger* at ¶ 16.

{¶15} On appeal, the sufficiency-of-the-evidence standard applies to assignments of error regarding the defendant's burden of production. *Messenger* at ¶ 26. And a manifest-weight challenge applies to the state's burden of persuasion. *Id.*

{¶16} To make a self-defense claim, a defendant must establish

> (1) That the defendant was not at fault in creating the situation giving rise to the affray;

> (2) That the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force; and
>
> (3) That the defendant did not violate any duty to retreat or avoid the danger.

State v. Barnes, 2002-Ohio-68, ¶ 11. Further, when a defendant properly introduces sufficient evidence to shift the burden to the State, the State need only disprove one element of self-defense beyond a reasonable doubt. Said another way, the State must prove any one of the following to prevail over a defendant's self-defense claim:

> (1) That the defendant was *at fault* in creating the situation giving rise to the affray;
>
> (2) That the defendant *did not* have a bona fide belief that he was in imminent danger of death or great bodily harm for which the use of deadly force was his only means of escape; or
>
> (3) That the defendant *did violate* a duty to retreat or avoid the danger.

Smith, 2020-Ohio-4976, at ¶ 50 (1st Dist.).

{¶17} The State agrees that Keith met this burden of providing sufficient evidence that he used force in self-defense. As such, our analysis focuses on whether the State met its burden of *dis*proving an element of self-defense beyond a reasonable doubt. Therefore, we will review this challenge under a manifest-weight standard. *See Messenger*, 2022-Ohio-4562, at ¶ 26. "In evaluating a manifest weight challenge involving self-defense, we must review the entire record, consider the credibility of

witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice with respect to its finding that the state disproved at least one of the elements of self-defense beyond a reasonable doubt." *State v. Gibson*, 2023-Ohio-1640, ¶ 12 (1st Dist.).

{¶18} "[S]elf-defense claims are generally an issue of credibility." *State v. Gardner*, 2022-Ohio-381, ¶ 26 (8th Dist.). When assessing witness credibility, the reviewing court must give deference to the factfinder's credibility determinations. *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 1. An appellate court sits as a thirteenth juror in a manifest-weight challenge "only when evidence contradicts a fact-finder's findings." *Id.* at ¶ 3. The court should reverse the conviction and grant a new trial only under exceptional circumstances where the evidence weighs heavily against the conviction. *State v. Walton*, 2023-Ohio-585, ¶ 13 (1st Dist.).

1. Fault in Creating the Situation

{¶19} When assessing whether a defendant was at fault in creating the situation, courts essentially ask whether the defendant was the initial aggressor. *State v. Gillis*, 2024-Ohio-726, ¶ 52 (8th Dist.), citing *Gardner* at ¶ 25. Defendants may be at fault if they used force first. *State v. Brunson*, 2025-Ohio-2057, ¶ 11 (1st Dist.). But the inquiry is broader than simply asking whether the person was the initial aggressor. *State v. Elam*, 2022-Ohio-1895, ¶ 14 (12th Dist.). For example, a person may not voluntarily enter or reenter an encounter and then claim self-defense. *State v. Nichols*, 2002 Ohio App. LEXIS 329, *10 (4th Dist. Jan. 22, 2002). Moreover, a defendant can be found at fault for creating the situation if they knowingly choose to go to a place where the victim will be. *State v. Ellis*, 2012-Ohio-3586, ¶ 15 (10th Dist.).

{¶20} The facts in this case can be viewed as two separate incidents of Keith's use of force.

{¶21} The first incident occurred inside the house, on the stairs. Keith was lawfully in N.K.'s house and was confronted by T.B. only after T.B. ran up the stairs to an area he was not permitted to enter. This first incident ended after Keith disarmed T.B. and T.B. ran outside.

{¶22} The second incident began after T.B. exited the house. What Keith did during the second incident—shooting his weapon again at T.B. outside of the house—can be seen as Keith being the initial aggressor in a second confrontation. And, indeed, the video shows an unarmed T.B. exit the house and try to get away. The video also shows Keith's hand point a gun at T.B. and shoot.

2. Bona Fide Belief of Imminent Danger

{¶23} The second element of self-defense involves both subjective and objective considerations. *State v. Mitchell*, 2023-Ohio-2604, ¶ 24 (1st Dist.). The defendant must have an honest belief that he was in danger of death or great bodily harm, and that belief must be objectively reasonable. *Id.* This element also requires that the defendant's use of force be reasonably proportional to repel the danger and not excessive. *See State v. Terry*, 2023-Ohio-2074, ¶ 15 (1st Dist.). The continued use of deadly force is excessive when it is still used even after the threat of danger has been removed. *State v. Hipps*, 2026-Ohio-1850, ¶ 36 (10th Dist.).

{¶24} A situation ceases to be dangerous if the victim becomes unarmed during the defendant's use of force. *Id.* So too is it excessive to continue using deadly force while the victim is leaving the confrontation or is incapacitated. *See State v. Tunstall*, 2024-Ohio-2376, ¶ 26 (2d Dist.) (holding it is reasonable for a jury to determine excessive force was used when defendant shot at victim as victim was running away); *State v. Lane*, 2023-Ohio-1305, ¶ 26 (6th Dist.) (holding that defendant's action of kicking the victim after the victim had become unconscious was

disproportionate). The prohibition on excessive force persists even if the defendant was in their residence. *State v. Kean*, 2019-Ohio-1171, ¶ 58 (10th Dist.). Essentially, the State can disprove the second element of a self-defense claim by showing that the defendant kept using force after the threat was no longer present.

{¶25} Here, Keith testified that he feared for his life when T.B. allegedly reached for his weapon on the staircase. While this may be true, Keith's argument falls apart once T.B. was disarmed and outside of the house.

{¶26} In the house, Keith shot T.B. twice. This second shot punctured T.B.'s lung. Then, according to Keith, he disarmed T.B. at the bottom of the stairs. Any initial justification for deadly force evaporated once T.B. was shot twice and disarmed. Because T.B. was unarmed, seriously injured, and fleeing, Keith lacked an objectively reasonable belief of imminent danger.

{¶27} Despite being out of danger, Keith continued to use deadly force against T.B. As shown in the video of the incident, T.B. is seen to be injured, unarmed, and attempting to get away while Keith points a weapon at T.B. and shoots. Not only is T.B. unarmed, but to get to the weapon he dropped on the steps inside the house, he would have had to crawl past Keith. And while Keith testified that he did not fire his weapon outside of the house, other witness testimony, the video footage, and the spent shell casing found where Keith was standing show the opposite.

***

{¶28} The manifest weight of the evidence demonstrated that during the second incident, Keith was the initial aggressor, and he did not have a bona fide belief that he was in imminent danger of death or great bodily harm for which the use of deadly force was his only means of escape. The State disproved the first and second prongs of self-defense beyond a reasonable doubt. Disproving either prong would have

been sufficient for the State to overcome its burden.

{¶29} After reviewing the entire record and considering the credibility of the witnesses, we hold that the jury did not clearly lose its way and create a manifest miscarriage of justice with respect to its rejection of Keith's claim of self-defense.

{¶30} Keith's first assignment of error is overruled.

B. Reagan Tokes Law

{¶31} Keith's second assignment of error states that the trial court failed to give Keith the complete Reagan Tokes notices under R.C. 2929.19(B)(2)(c). Specifically, the trial court failed to give Keith the proper (iv) notification. The (iv) notification requires the trial court to notify the offender that the Department of Rehabilitation and Correction may extend the offender's incarceration more than once, subject to other statutory limitations. The State agrees with Keith's position. Here, the State concedes that the "trial court failed to fully comply with the notification requirements of R.C. 2929.19(B)(2)(C)." The parties request that the sentence be corrected.

{¶32} Keith requests that his sentence be reversed. But this court has consistently held that remand, not reversal, is the proper remedy for Reagan Tokes failures. "The failure to advise the defendant of any of the five notifications constitutes error and a remand is necessary for the limited purpose of permitting the sentencing court to provide the mandatory notifications." *State v. Kelly*, 2022-Ohio-3628, ¶ 9 (1st Dist.), citing *State v. Jackson*, 2022-Ohio-3449, ¶ 20 (1st Dist.).

{¶33} Accordingly, this cause must be remanded to the trial court to correct its error.

C. Ineffective Assistance of Counsel

{¶34} To succeed on an ineffective-assistance-of-counsel claim, appellant

must show both that "counsel's performance was deficient" and "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). There is a presumption that counsel was reasonable. *Id.* at 689. "To justify a finding of ineffective assistance of counsel, the appellant must overcome a strong presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *State v. Carter*, 1995-Ohio-104, ¶ 41. And to show prejudice, an appellant "must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989).

{¶35} In his assignment of error, Keith claims his counsel was ineffective for (1) failing to engage experts to examine ballistics or to enhance the Ring video footage, (2) failing to call N.K. as a witness, and (3) failing to renew the Crim.R. 29 motion for acquittal.

1. Failure to Engage Experts

{¶36} Generally, the failure to call an expert witness is a matter of trial strategy and does not constitute ineffective assistance. *State v. McHenry*, 2018-Ohio-3383, ¶ 25 (1st Dist.). Moreover, an ineffective-assistance-of-counsel claim cannot rest on speculation about what an unretained expert *might* have concluded. *State v. Patton*, 2021-Ohio-295, ¶ 31 (1st Dist.).

{¶37} Here, Keith argues that his trial counsel should have engaged an expert to analyze the scene forensics and another expert to enhance the Ring doorbell footage. Keith, however, cannot show that the trial outcome would have been different but for the decision not to engage experts. Indeed, this court has recently rejected similar arguments in *State v. Turner*, 2025-Ohio-386 (1st Dist.). There, the defendant argued that counsel should have retained both an independent firearms expert and an expert

to enhance surveillance footage. *Id.* at ¶ 43-47. This court rejected these arguments as too speculative. *Id.* at ¶ 46-47.

{¶38} The same reasoning applies here. The record contains no evidence establishing what either proposed expert would have concluded. Having an expert slow down and enhance the video would not have changed the trial outcome. The Ring video shows Keith pointing and firing his gun at T.B. The video is clear enough that expert enhancement would not change what the jury could already see. Nor would a ballistics expert help. Keith was found guilty under R.C. 2903.11(A)(1) and (A)(2). Importantly, (A)(2) prohibits a person from "caus[ing] or attempt[ing] to cause physical harm to another." The word "attempt" matters here because even if T.P.'s firing of his gun injured T.B., the outcome against Keith would remain the same, as the jury determined that Keith fired at T.B. This would satisfy the attempt language in (A)(2), so it does not matter whether Keith or T.P. fired the bullets that struck T.B. outside the house.

2. Failure to Call N.K. as a Witness

{¶39} Keith argues that trial counsel was ineffective for failing to call N.K. to testify. Generally, however, "counsel's decision whether to call a witness falls within the rubric of trial strategy and will not be second-guessed by a reviewing court." *State v. Treesh*, 2001-Ohio-4, ¶ 109.

{¶40} Moreover, our review is confined to the trial court record and an appellate court generally cannot "stray outside of the trial record to evaluate" the value of unintroduced evidence. *State v. Bell*, 2023-Ohio-1010, ¶ 9 (1st Dist.). Consequently, "it is often incredibly difficult, if not impossible" to establish ineffective assistance of counsel under a failure-to-introduce theory because any assessment of the omitted evidence would be "purely speculative." *State v. Collins*, 2024-Ohio-5112, ¶ 71-72.

{¶41} The same problem is present here. Nothing in the record establishes what N.K. would have testified to had she been called. Therefore, what N.K. would have said is speculative. To the extent N.K.'s testimony could have helped Keith's case, such an argument must be raised in a proceeding where such evidence could be introduced. Accordingly, Keith has not demonstrated ineffective assistance of counsel on this basis.

3. Failure to Renew Crim.R. 29 Motion

{¶42} Lastly, Keith argues that trial counsel was ineffective for failing to renew the Crim.R. 29 motion. But the "failure to renew an acquittal motion does not constitute ineffective assistance of counsel when the motion would have been futile." *State v. Peelman*, 2010-Ohio-4472, ¶ 9 (1st Dist.). Likewise, counsel's failure to renew a Crim.R. 29 motion is not prejudicial if the State presented sufficient evidence of each element of the offense and, therefore, the motion would have been overruled. *State v. Simmons*, 2014-Ohio-3695, ¶ 102 (1st Dist.).

{¶43} The State presented sufficient evidence of each element of the offense and disproved Keith's self-defense claim. A renewed Crim.R. 29 motion would therefore have been overruled. Because Keith cannot show that the outcome would have been different had counsel renewed the motion, he cannot establish prejudice, and his ineffective-assistance-of-counsel claim fails here, too.

III. Conclusion

{¶44} We therefore overrule Keith's first and third assignments of error. We sustain Keith's second assignment of error and remand the cause for the limited purpose of permitting the trial court to provide the mandatory notifications as required by R.C. 2929.19(B)(2)(c).

Judgment affirmed and cause remanded.

ZAYAS, P.J., and **NESTOR, J.,** concur.