[Cite as *State v. Walters*, 2023-Ohio-2701.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 29603
	:	
v.	:	Trial Court Case No. 2021 CR 02538
	:	
RAYMOND WALTERS	:	(Criminal Appeal from Common Pleas Court)
	:	
Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on August 4, 2023

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MATHIAS H. HECK, JR., by ANDREW T. FRENCH, Attorney for Appellee

DAVID R. MILES, Attorney for Appellant

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HUFFMAN, J.

{¶ 1} Raymond Walters appeals from his convictions for murder and having weapons while under disability, with repeat violent offender and firearm specifications, following his no contest pleas. He argues that he was denied the effective assistance of counsel in the trial court proceedings, that the trial court erred in accepting his pleas because his pleas were not knowing, intelligent, and voluntary, and that the trial court

erred in denying his motion in limine, which sought to allow evidence of the victim's prior violent behavior in order to establish that Walters had reasonably believed that the use of force was necessary to protect himself. For the following reasons, the judgment of the trial court will be affirmed.

Facts and Procedural History

{¶ 2} The charges arose from Walters's shooting of George Smith in July 2021, which was captured on surveillance cameras. In August 2021, Walters was indicted on three counts of murder and three counts of felonious assault, each of which included a three-year firearm specification, a 54-month firearm specification, and a repeat violent offender specification. He was also indicted for improperly discharging a firearm at or into a habitation, discharge of a firearm on or near a prohibited premises, and having weapons while under disability; each of these offenses also included firearm specifications, and the count of improperly discharging a firearm included a repeat violent offender specification. Walters filed a motion to suppress, a motion to sever the counts for trial, and a motion in limine requesting to admit prior acts of the victim. After the trial court overruled all of these motions, Walters entered into a plea agreement with the State.

{¶ 3} Pursuant to the plea agreement, Walters pled no contest to three counts of murder, two counts of felonious assault, and having weapons while under disability, including all of the specifications. The three other counts (felonious assault, improperly discharging a firearm at or into a habitation, and discharge of a firearm at or near a prohibited premises) and their specifications were dismissed. The trial court found Walters guilty on all of the charges to which he pled no contest, merged several of the

offenses and specifications, and sentenced Walters on one count of murder, having weapons under disability, and the firearm and repeat violent offender specifications. It imposed an aggregate prison term of 32 years to life.

{¶ 4} Walters appeals from his convictions, raising three assignments of error.

Ineffective Assistance of Counsel

{¶ 5} In his first assignment of error, Walters argues that he received ineffective assistance of counsel in the trial court in five ways: 1) defense counsel violated Crim.R. 12.2 by failing to file a timely notice of Walter's intent to argue self-defense; 2) defense counsel improperly waived Walters's appearance at the pretrial conference at which his motion in limine and his self-defense claim were discussed; 3) counsel was ineffective for failing to object to the viewing by the trial court of the surveillance video of Walters's shooting Smith, because the video was allegedly "not conclusive on the issue of self-defense"; 4) defense counsel failed to proffer any evidence to bolster his claim of self-defense at the hearing to preserve the record for appeal; and 5) counsel's performance was deficient when he advised Walters that his no contest pleas would preserve his right to challenge the trial court's decisions on his motion in limine and his right to argue self-defense.

{¶ 6} We review alleged instances of ineffective assistance of trial counsel pursuant to the two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), which has been adopted by the Supreme Court of Ohio in *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). *See also State*

v. Blanton, 2023-Ohio-89, 206 N.E.3d 14, ¶ 56 (2d Dist.). To prevail on a claim of ineffective assistance, Walters "must show that his trial counsel rendered deficient performance and that counsel's deficient performance prejudiced him." *Strickland* at paragraph two of the syllabus; *Bradley* at paragraph two of the syllabus. In the absence of a showing of either deficient performance or prejudice, a claim of ineffective assistance of counsel fails. *Blanton* at ¶ 56, citing *Strickland* at 697.

{¶ 7} To establish deficient performance, a defendant must show that his trial counsel's performance fell below an objective standard of reasonable representation. *Strickland* at 688. In evaluating counsel's performance, a reviewing court "must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id*. at 689. "The adequacy of counsel's performance must be viewed in light of all of the circumstances surrounding the trial court proceedings." *State v. Jackson*, 2d Dist. Champaign No. 2004-CA-24, 2005-Ohio-6143, ¶ 29, citing *Strickland*.

{¶ 8} To establish prejudice, a defendant must show that there is "a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 204, citing *Strickland* at 687-688 and *Bradley* at paragraph two of the syllabus. " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Bradley* at 142, quoting *Strickland* at 694.

{¶ 9} In reviewing ineffective assistance claims, we must not second-guess trial strategy decisions. *State v. Mason*, 82 Ohio St.3d 144, 157, 694 N.E.2d 932 (1998); *Strickland* at 689. Therefore, " 'trial counsel is allowed wide latitude in formulating trial

strategy[.]' " *State v. Collins*, 2d Dist. Miami No. 2010-CA-22, 2011-Ohio-4475, ¶ 15, quoting *State v. Olsen*, 2d Dist. Clark No. 2009-CA-110, 2011-Ohio-3420, ¶ 121. "Debatable strategic and tactical decisions may not form the basis of a claim for ineffective assistance of counsel, even if, in hindsight, it looks as if a better strategy had been available." *State v. Conley*, 2015-Ohio-2553, 43 N.E.3d 775, ¶ 56 (2d Dist.), citing *State v. Cook*, 65 Ohio St.3d 516, 524-525, 605 N.E.2d 70 (1992).

Claim 1: Improper Notice of Self-Defense

{¶ 10} Prior to his scheduled trial date, Walters filed a "Motion in Limine Regarding Victim's Character." In the motion, he asserted that his knowledge of the allegedly violent character of the victim, George Smith, had caused him to reasonably believe that the immediate use of force was necessary to protect himself from Smith at the time of the shooting. The motion stated that Walters intended to argue self-defense at trial, and it identified nine instances in which Smith had allegedly been violent in such a manner that Walters was justified in fearing Smith. Walters sought permission to introduce evidence of those specific acts at trial. Walters later amended his motion to add an additional incident of Smith's allegedly threatening Walters. The State opposed the motion, asserting that Walters failed to provide timely notice of his intent to argue self-defense.

{¶ 11} After a hearing on the motion at which defense counsel waived Walters's appearance, the court allowed consideration of the untimely notice of intent to raise self-defense as required by Crim.R. 12.2. However, after considering the parties' arguments regarding self-defense and viewing the surveillance videos of Walters shooting Smith, the court concluded that the defense of self-defense was not available to Walters, that

evidence regarding Smith's prior actions would not be admissible, and that no self-defense instruction would be given if the matter went to trial.

{¶ 12} Walters asserts that defense counsel's motion in limine and amended motion in limine attempted to comply with Crim.R. 12.2, but that the "labeling of the pleadings as motion[s] in limine was wrong" and led to the trial court's ruling that self-defense was not available as a defense. The State responds that, despite any potential deficiency on counsel's part in filing a notice of self-defense, Walter's claim of ineffective assistance of counsel on this basis necessarily fails because Walter was not prejudiced. We agree.

{¶ 13} Crim.R. 12.2 governs notice of self-defense: "Whenever a defendant in a criminal case proposes to offer evidence or argue self-defense * * *, the defendant shall, not less than thirty days before trial in a felony case * * *, give notice in writing of such intent." Defense counsel gave only 10 days' notice of Walters' intent to argue self-defense at trial. However, Crim.R. 12.2 further provides that, if "the defendant fails to file such written notice, the court may exclude evidence offered by the defendant related to the defense, unless the court determines that in the interest of justice such evidence should be admitted." Here, the trial court indicated at the hearing that it would hear Walters's arguments about self-defense, which will be discussed in detail below, despite the untimely filing of his intent to argue self-defense. Having been able to present his self-defense argument in full, Walters cannot establish that he was prejudiced by the improper notice, and his claim of ineffective assistance of counsel on this issue is without merit.

Claim 2: *Waiver of Walters's Appearance*

{¶ 14} Walters asserts that defense counsel should have insisted on Walters's presence when the issue of self-defense was argued to the trial court on September 8, 2022. It is true that "a defendant 'has a fundamental right to be present at all critical stages of his criminal trial.' " *State v. White*, 82 Ohio St.3d 16, 26, 693 N.E.2d 772 (1998), citing *State v. Hill*, 73 Ohio St.3d 433, 444, 653 N.E.2d 271 (1995); *see also* Sixth and Fourteenth Amendments to the United States Constitution; Ohio Constitution, Article I, Section 10; Crim.R. 43(A). "However, the right to be present is not absolute." *White*, citing *State v. Meade*, 80 Ohio St.3d 419, 421, 687 N.E.2d 278 (1997). Accordingly, "even if a defendant should have been present at a stage of the trial, '[e]rrors of constitutional dimension are not *ipso facto* prejudicial.' " *Id., citing State v. Williams*, 6 Ohio St.3d 281, 286, 452 N.E.2d 1323 (1983). "Prejudicial error exists only where 'a fair and just hearing [is] thwarted by [defendant's] absence.' " *Id.,* quoting *Snyder v. Massachusetts*, 291 U.S. 97, 108, 54 S.Ct. 330, 78 L.Ed. 674 (1934). "Therefore, a defendant's absence in violation of Crim.R. 43(A) can constitute harmless error where he suffered no prejudice, even though such absence was improper." (Citations omitted.) *State v. Almosawi*, 2d Dist. Montgomery No. 24633, 2012-Ohio-3385, ¶ 18.

{¶ 15} In *State v. Treesh*, 90 Ohio St.3d 460, 739 N.E.2d 749, for example, the Supreme Court of Ohio overruled Treesh's claim of ineffective assistance of counsel based upon his counsel's waiver of his right to be present at two pretrial conferences, finding that even if Treesh were correct that he should have been present at the pretrials, he had failed to demonstrate "how his attorney's waiver of his presence in any way

prejudiced him." *Id.* at 489. *See also State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio 6046, 837 N.E.2d 315, ¶ 215 (finding appellant had failed to demonstrate how his absence from in-chambers conferences prejudiced him, where "the conferences mostly involved legal issues within the professional competence of counsel, not issues that appellant must personally decide").

{¶ 16} Walters presents no argument as to how his absence from the pretrial conference at which the motion in limine was discussed deprived him of a fair hearing or how his presence would have made any material difference to the trial court's rulings on his motion in limine or his self-defense claim. Defense counsel argued at the hearing that the video of the shooting, standing alone, omitted important context relative to Walters's self-defense claim, such as that Walters had been living with Smith and had had a right to be at the scene to retrieve his belongings after a dispute between him and Smith. Defense counsel argued that Walters had "the ability to stand his ground" and that the defense had presented sufficient evidence to require the State to prove that Walters had not acted in self-defense. Defense counsel further argued that prior violent conduct and verbal threats by Smith had caused Walters to fear Smith. Counsel advised the court that "we're claiming through my client and through other witnesses" that Smith had previously tried to hit Walters with a pickaxe and a tire iron and that an incident had occurred in the hours prior to the shooting that had caused Walters to choose to end his relationship with Smith. Counsel further argued that, in the video, Smith approached Walters as if he was unafraid and "ready to confront" Walters, just as Walters wanted to confront Smith. Counsel also asserted that, although Smith was unarmed, Walters was

not wearing his glasses and did not know if Smith had anything in his hands.

{¶ 17} Based upon these arguments, even assuming that defense counsel's waiver of Walter's presence at the hearing constituted deficient performance, prejudice is not demonstrated. Defense counsel argued zealously on Walters's behalf, and the hearing involved legal issues within the professional competence of counsel, not issues that Walters was required to personally decide. We cannot conclude that Walters's absence prevented a fair and just hearing on the issue of self-defense, and Walters has not demonstrated ineffective assistance of counsel on this issue.

Claim 3: Failure to Object to the Viewing of the Video

{¶ 18} According to Walters, defense counsel acted ineffectively in failing to object to the surveillance video of the shooting, because it "was not conclusive on the issue of self-defense." We disagree. The following exchange occurred between defense counsel and the court regarding the viewing of the video:

> THE COURT: [Defense Counsel], it's been a suggestion by [the prosecutor] that I watch the video. I have mixed feelings about that, but what's your position about the court watching that video?
>
> [DEFENSE COUNSEL]: Judge, obviously, we're spending some time talking about it, so I know it's important, and I know the Court's taking serious consideration of this. I don't have any problem with the video. My only caution is when I first saw the video, I thought oh, this is not good. * * *
>
> Then, obviously, as I've gotten to know the case more and talked to witnesses and got the background, it's different. That's my only concern is

I don't have a problem with you seeing the video, but if you see the video and there's zero context behind it, it's very easy to look at the video and think well where's your self-defense in this.

So that's kind of - - I don't have a problem with it, Judge, but I just wanted to make sure I said that because it's - -

THE COURT: Well, a couple comments. One is I think you have agreed with me that I have to make a ruling of whether or not self-defense is even in play here or not.

[DEFENSE COUNSEL]: Right.

THE COURT: And if it is, then I think these other incidents play some part in that.

[DEFENSE COUNSEL]: Right.

THE COURT: And I think the evidence, at least the only evidence that the Court has right now because I haven't heard any of the testimony, would be the video. And again, [Defense Counsel], you know me. I've been doing this a long time and I'm pretty hardened to stuff bothering me or jumping - -

[DEFENSE COUNSEL]: Yeah.

THE COURT: - - to conclusions. I know there's always other sides to it.

[DEFENSE COUNSEL]: True.

THE COURT: So for what it's worth, I would just say that but, again,

if either side does not want the Court to view this, I will not. It's as simple as that.

[DEFENSE COUNSEL]: I'm fine. * * * I think it's important in making your consideration. * * * I have to say the other stuff about context because I know that it's so - -

THE COURT: Right. And I've already thought about it.

[DEFENSE COUNSEL]: Without any context, I don't even think I'm trying to persuade you at this point.

THE COURT: I understand that.

* * *

THE COURT: But I also note that, from what I understand talking to counsel on this - -

[DEFENSE COUNSEL]: Yeah.

THE COURT: - - that this is a pretty clear view of at least that capsule of time that happened from the time of the Defendant arriving to the time that the alleged victim was shot. I understand we're just looking at that without the background information.

[DEFENSE COUNSEL]: Yes.

THE COURT: But I think that could provide some guidance to the Court and its ruling.

{¶ 19} The video is part of the record, and it reflects that Smith and a female adult were outside in an alley, in a residential area, on a clear, early evening; Smith appeared

to be working on a pickup truck with the hood raised. The female alerted Smith to the approach of a vehicle in which Walters was a passenger, and the vehicle stopped in the alley close to the pickup truck. There was a large fence behind the pickup truck, and Smith was blocked in by the other vehicle with no means of egress. As Walters exited the passenger side of the vehicle, a clearly unarmed and shirtless Smith approached Walters in a non-threatening manner with nothing in his hands. Within three seconds of exiting the vehicle, Walters fired the first shot at Smith and missed. Smith raised his arms in what the trial court described as a "surrender posture." Walters fired a second shot a couple of seconds later at close range; it knocked Smith's ball cap off his head while Smith passed in front of Walters. When Smith then turned and ran from Walters with his back to him, Walters fired a third shot within a couple more seconds, striking Smith in the back of the head. Smith fell to the ground and exhibited no movement. The entire encounter lasted ten seconds, after which Walters immediately got back into the vehicle in which he had arrived and left the scene.

{¶ 20} "To establish self-defense, the evidence must show (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 (3) that the defendant did not violate any duty to retreat or avoid danger." *State v. Santana*, 2d Dist. Montgomery No. 29348, 2022-Ohio-4118, ¶ 29. "If the evidence shows beyond a reasonable doubt that at least one of these three elements is missing, a defendant cannot establish self-defense." *Id.*

{¶ 21} We agree with the State that a pretrial ruling on the admissibility of Smith's

alleged prior bad acts was required so that the parties could prepare for trial, and the admissibility of those alleged prior bad acts was dependent on the trial court's first determining if self-defense was applicable. The most effective way for the trial court to do that was to view the video, as the court could not consider the matter of self-defense without the context of the encounter as reflected in the video. We cannot conclude that counsel's performance was deficient in failing to object to the viewing of the video. Even if defense counsel had objected and the court had not reviewed the video at the hearing, there is no reasonable probability that the trial court's decision on self-defense would have been different. Even if Walters had successfully argued that self-defense was available to him for the first and second shot, it was not viable when Walters fired the third shot, striking Smith in the back of the head. Whether the court had viewed the video in camera before trial or during trial, the content of the video established that Walters was at fault in instigating the shooting. He proceeded to the scene with a gun to confront Smith, and Walters did not have a bona fide belief that he was in imminent danger of death or great bodily harm, because Smith was unarmed and running away from Walters when Walters shot him in the back of the head. In other words, Walters fails to establish prejudice based on defense counsel's failure to object to the viewing of the surveillance video at the hearing.

Claim 4: Failure to Proffer Evidence

{¶ 22} Walters argues that counsel did not proffer any evidence at the September 8, 2022 hearing "to preserve the record for appeal," without identifying any specific evidence he believes should have been proffered. We presume he refers to evidence of

Smith's alleged prior bad acts to support his claim of self-defense. However, defense counsel argued about the relevant context in which to consider the video, and his liminal motion listed 10 instances of Smith's alleged prior bad acts. In other words, the trial court had been thoroughly advised of the evidence Walters sought to include prior to viewing the video. We cannot conclude that counsel was ineffective in failing to specifically proffer any evidence, given that the *only* conclusion to be drawn from the video was that a claim of self-defense was not viable. Accordingly, ineffective assistance of counsel is not demonstrated on this basis.

Claim 5: Preservation of Right to Appeal

{¶ 23} Finally, Walters argues that he "based his no contest pleas on his rights to retain rights for appellate review," and that a "no contest plea after an adverse ruling in limine does not preserve error for review." He asserts that defense counsel wrongly advised him that his no contest pleas preserved his appellate rights. The State responds that Walters was not misled. We agree. Ineffective assistance is not demonstrated.

{¶ 24} The following exchange occurred at the plea hearing:

> THE COURT: Has anyone promised you anything to get you to enter this plea today other than a dismissal of those three counts that the State mentioned?
>
> THE DEFENDANT: No. No. I'm just trying to retain some rights for an appellate review.
>
> [DEFENSE COUNSEL]: Judge, just - - I want to go ahead and mention this part of the reason for his no contest plea is because of the

hearing and the ruling that we got from the Court yesterday as part of his reasoning. Just for the record.

THE COURT: I fully understand that.

* * *

THE COURT: And you certainly - - with that type of plea as your attorney tells you, you have the right to appeal, but I still have to go through this with you.

At the conclusion of the sentencing hearing, the court advised Walters, "you do have your right to appeal the sentence and judgment of this Court by filing a notice of appeal within 30-days of today's date."

{¶ 25} "[A] no-contest plea generally does not preserve for appeal a trial court's ruling on a motion in limine." *State v. Monticue*, 2d Dist. Miami No. 2006-CA-33, 2007-Ohio-4615, ¶ 16. The Twelfth District distinguished between a motion in limine and a motion to suppress in *State v. Napier*, 12th Dist. Clermont No. CA2016-04-022, 2017-Ohio-246, ¶ 18-20, as follows:

> The purpose and effect of a motion in limine is distinct from that of a motion to suppress. "A 'motion to suppress' is defined as a '[d]evice used to eliminate from the trial of a criminal case evidence which has been secured illegally[;]' " thus, it "is the proper vehicle for raising constitutional challenges based on the exclusionary rule * * *." (Citations omitted.) *State v. French*, 72 Ohio St.3d 446, 449 (1995), quoting *Black's Law Dictionary* (6th Ed.1990) 1014. "A 'motion in limine' is defined as '[a]

pretrial motion requesting [the] court to prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to [the] moving party that curative instructions cannot prevent [a] predispositional effect on [the] jury.' " *French* at 449, citing *Black's Law Dictionary*, *supra*, at 1013. The purpose of a motion in limine "is to avoid injection into [the] trial of matters which are irrelevant, inadmissible and prejudicial * * *." *Black's Law Dictionary, supra*, at 1013-14.

"A motion in limine * * * is 'a tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of [an] evidentiary issue.' " *State v. Harris*, 12th Dist. Butler No. CA2007-11-280, 2008-Ohio-4504, ¶ 27, quoting *State v. Grubb*, 28 Ohio St.3d 199, 201-02 (1986). "A motion in limine is directed to the inherent discretion of the trial judge, about an evidentiary issue that is anticipated, but has not yet been presented in full context." (Citation omitted.) *State v. Harris*, 12th Dist. Butler No. CA2007-11-280, 2008-Ohio-4504, ¶ 27. It is important to note that not all motions in limine are alike. *See State v. Shalash*, 12th Dist. Warren No. CA2014-12-146, 2015-Ohio-3836, ¶ 30-31.

A definitive or exclusionary motion in limine is the functional equivalent of a motion to suppress, which determines the admissibility of evidence with finality. *State v. Johnston*, 2d Dist. Montgomery No. 26016, 2015-Ohio-450, at ¶ 16, citing *French* at 450. Specifically, granting a definitive or exclusionary motion in limine not only prevents evidence from

being introduced, but also prevents any mentioning of the excluded evidence during trial. *Johnston* at ¶ 16, citing *State v. Echard*, 9th Dist. Summit No. 24643, 2009-Ohio-6616, ¶ 20. A motion in limine may be used in this regard "to suppress evidence that is either not competent or improper due to some unusual circumstance not rising to the level of a constitutional violation." *Johnston* at ¶ 16, citing *French* at 450. " 'The essential difference between a [motion to suppress] and a motion in limine is that the former is capable of resolution without a full trial, while the latter requires consideration of the issue in the context of the other evidence.' " (Emphasis deleted.) *Johnston* at ¶ 17, quoting *State v. Hall*, 57 Ohio App.3d 144, 146 (8th Dist.1989).

{¶ 26} In *Johnston,* we observed:

"Not all motions in limine are aimed at evidence that may later become relevant and admissible if and when a proper foundation has been laid at trial. Some evidence cannot ever become relevant and admissible." [*Akron v. Carter*, 190 Ohio App.3d 420, 2010-Ohio-5462, 942 N.E.2d 409 (9th Dist.)] at ¶ 8. For example, in *Carter*, the court referenced a statutory scheme that prevents privileged mediation communications from being discoverable or admissible as evidence unless certain criteria are met, and it noted that "[w]hether evidence is privileged under the statute is not dependent on a foundation being laid at trial. Therefore, the ruling on this type of motion in limine [which either excludes or permits the privileged

mediation communication as evidence at trial] is not preliminary. It is definitive." *Id*.

{¶ 27} We also considered *State v. Hall*, 57 Ohio App.3d 144, 567 N.E.2d 305 (8th Dist.1989), in which a defendant who had been charged with kidnapping and aggravated robbery filed a motion in limine seeking to prevent the State from introducing testimony of two witnesses whom the defendant had previously raped and robbed as a juvenile. *Johnston* at ¶ 18. After an evidentiary hearing, the court overruled the motion, Hall pled no contest, and he appealed the evidentiary ruling. *Id.* Initially, the appellate court in *Hall* determined whether the defendant had properly preserved his claimed errors for appeal, given that a ruling on a motion in limine is interlocutory and generally not reviewable unless the defendant objects at trial. *Id.* at ¶ 19, citing *Hall* at 145-146. Despite the defendant's not going to trial and despite his motion having been presented as a motion in limine, the appellate court determined that the defendant's challenge to the evidentiary ruling had been preserved for appeal "because it was actually a suppression ruling." *Id*., citing *Hall* at 146. The Eighth District treated it as a suppression ruling because the evidentiary issue to be reviewed had been fully developed at the evidentiary hearing and was capable of resolution without a full trial. *Id.*

{¶ 28} Here, Walters sought to admit evidence of Smith's alleged prior bad acts to establish his claim of self-defense. The court excluded any evidence of Smith's alleged prior bad acts after concluding, based upon the surveillance video, that Walters was not entitled to an instruction on self-defense. In our view, the trial court's ruling on the admissibility of Smith's alleged prior bad acts was not preliminary but rather was

definitive; the video conclusively established that Walters did not act in self-defense, where he alone created the situation giving rise to the affray and he did not have a bona fide belief that he was in imminent danger of death or great bodily harm. Most significantly, the third shot hit Smith in the back of the head, causing his death. The court effectively issued a suppression ruling. In other words, the evidence Walters sought to admit regarding Smith's conduct would never have become relevant and admissible at trial under the circumstances reflected in the video. Thus, the trial court's ruling was final, and ineffective assistance is not demonstrated in defense counsel's advising Walters that his appellate rights were preserved on the issue of the exclusion of Smith's alleged prior bad acts.

{¶ 29} Walter's first assignment of error is overruled.

No Contest Pleas

{¶ 30} In his second assignment of error, Walters argues that the trial court erred in accepting his no contest pleas. According to Walters, his pleas were not knowing, intelligent, and voluntary because they were "based on the faulty reasoning" that he could appeal the trial court's ruling on self-defense. The State responds that Walters's no contest pleas did preserve his right to appeal the trial court's ruling on his motion in limine, because it was the functional equivalent of a ruling on a motion to suppress.

{¶ 31} It is well-settled that "[d]ue process requires that a defendant's plea be knowing, intelligent and voluntary." *State v. McCain,* 2d Dist. Champaign No. 2020-CA-16, 2021-Ohio-1605, ¶ 6, citing *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "In conducting the plea colloquy, the trial judge 'must convey

accurate information to the defendant so that the defendant can understand the consequences of his or her decision to enter a valid plea.' " *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246, ¶ 30, citing *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 25. "Compliance with Crim.R. 11(C) insures compliance with this constitutional mandate." *State v. Moody*, 2d Dist. Montgomery No. 28389, 2021-Ohio-396, ¶ 6, citing *State v. Cole*, 2d Dist. Montgomery No. 26122, 2015-Ohio-3793, ¶ 12.

{¶ 32} "Crim R. 11(C) requires that a defendant be advised of certain constitutional rights, and strict compliance with this part of the rule is required." *State v. Hutchins*, 2d Dist. Clark No. 2021-CA-22, 2021-Ohio-4334, ¶ 7, citing *State v. Thompson*, 2d Dist. Montgomery No. 28308, 2020-Ohio-211, ¶ 5. "Where a trial court fails to strictly comply with Crim.R. 11(C)(2)(c), the defendant's plea should be deemed invalid on appeal." (Citations omitted.) *Id.*

{¶ 33} Crim.R. 11(C)(2)(a) requires that a trial court determine whether a defendant is making his or her plea voluntarily, and Crim.R. 11(C)(2)(b) requires that the court inform the defendant of the consequences of the plea. See *Hutchins* at ¶ 8. Because these parts of the rule relate to non-constitutional issues, the defendant "must affirmatively show prejudice" to invalidate the plea where the trial court fails to comply fully with Crim.R. 11(C)(2)(a)-(b). *Id*., citing *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, 164 N.E.3d 286, ¶ 14; *State v. Rogers*, 2020-Ohio-4102, 157 N.E.3d 142, ¶ 16 (12th Dist.). To show that prejudice by the trial court's partial noncompliance with Crim.R. 11(C)(2)(a)-(b), the defendant must demonstrate that her or she "would [not]

otherwise have entered the plea." *Hutchins* at ¶ 8, citing *State v. Thompson*, 2d Dist. Montgomery No. 28308, 2020-Ohio-211, ¶ 5. Where a trial court completely fails to comply with Crim.R. 11(C)(2)(a)-(b), however, a defendant's plea should be invalidated on appeal, and the defendant need not show prejudice. *Dangler* at ¶ 14; *Rogers* at ¶ 16.

{¶ 34} The transcript of the plea colloquy shows that the trial court properly informed Walters of the constitutional rights he was waiving by pleading no contest and ascertained Walters's understanding of those rights. The court advised Walters of the effect of his no contest pleas and that the court would proceed to judgment, with disposition to occur at a later date. In addressing Walters personally, the court advised him of the maximum possible fines and prison terms for each offense and specification. The court also advised Walters that he was ineligible for community control sanctions, advised him regarding post-release control, and provided the notifications required under the Reagan Tokes Act. Walters advised the court that he entered his pleas voluntarily and that he understood the information provided to him. Walters was not misled about his ability to challenge the trial court's ruling on his motion in limine, and because the trial court strictly complied with all requirements of Crim.R. 11(C), the trial court did not err in concluding that Walters's plea was knowingly and voluntarily entered or in accepting his plea.

{¶ 35} Walters's second assignment of error is overruled.

Self-Defense

{¶ 36} In his third assignment of error, Walters argues that the trial court erred in making a definitive ruling in response to the motion in limine that self-defense would not

be an available defense at trial rather than deferring that decision until trial. He asserts that the court should have waited until all the evidence was presented at trial before rejecting his claim of self-defense. The State responds that the trial court did not abuse its discretion because, in ruling on Walters's liminal motion, it was necessary for the trial court to first determine the viability of Walters's self-defense claim.

{¶ 37} Like our review of the appropriateness of a jury instruction on self-defense, we review a trial court's pretrial determination of the admissibility of other acts or character evidence to support a self-defense claim for an abuse of discretion. *See State v. Taylor*, 2d Dist. Montgomery No. 28668, 2020-Ohio-6854, ¶ 10, citing *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989). " 'Abuse of discretion has been described as including a ruling that lacks a 'sound reasoning process.' " *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). It also encompasses arbitrary and unconscionable decisions. *AAAA Ents*. at 161.

{¶ 38} The State argues that, "[c]ritical to the trial court's determination of the admissibility of testimony related to the prior bad acts of [Smith] was whether Walters would likely be able to meet his initial burden, under R.C. 2901.05(B)(1), of presenting evidence that 'tends to support' that he used deadly force in self-defense."

{¶ 39} R.C. 2901.05(A) provides: "* * * The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense other than self-defense, * * * presented as described

in division (B)(1) of this section, is upon the accused." R.C. 2901.05(B)(1) states that a "person is allowed to act in self-defense * * *." It further states: "If, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the accused used the force in self-defense, * * * the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense * * * ."

{¶ 40} In *State v. Messenger*, Ohio Slip Opinion No. 2022-Ohio-4562, __ N.E.3d __, ¶ 21, the Supreme Court clarified that the "plain language of R.C. 2901.05(A) reflects that self-defense is still an affirmative defense and that the burden of production is still on the defendant * * *." A "defendant charged with an offense involving the use of force has the burden of producing legally sufficient evidence that the defendant's use of force was in self-defense." *Id.* at ¶ 25. "When considering a self-defense instruction, the trial court must determine whether the evidence presented, if believed, reasonably would support a self-defense claim." *State v. Cunningham*, 2d Dist. Montgomery No. 29122, 2023-Ohio-157,¶ 13, citing *State v. Wilson*, 2d Dist. Clark No. 2021-CA-68, 2022-Ohio-3763, ¶ 40. "To be justified, a jury instruction must be based on an actual issue in the case as demonstrated by the evidence." *Id.* Finally, "a self-defense claim requires consideration of the force used relative to the danger. 'If the force used was so disproportionate that it shows a purpose to injure, self-defense is unavailable.' " *Cunningham* at ¶ 14, quoting *State v. Barker*, 2d Dist. Montgomery No. 29227, 2022-Ohio-3756, ¶ 23. "A person may not provoke an assault or voluntarily enter an encounter and then claim a right to self-defense." *State v. Elam*, 12th Dist. Butler No. CA2021-08-106, 2022-Ohio-1895, ¶ 14.

{¶ 41} As discussed above, the surveillance video established that Walters had shot Smith in the back of the head within a few seconds of his arrival at the scene while Smith was fleeing from him. Under these circumstances, Walters could not have met his burden of production to support a claim of self-defense. In other words, the video unequivocally negated Walters's theory of self-defense and rendered his state of mind irrelevant when he shot Smith. The trial court did not abuse its discretion in refusing to allow character or other acts evidence in support of a claim of self-defense.

{¶ 42} Walters's third assignment of error is overruled.

Consecutive Sentences

{¶ 43} In his fourth assignment of error, Walters argues that the trial court erred in imposing consecutive sentences for the 54-month firearm specifications attendant to his convictions for murder and having weapons while under disability. He asserts that the imposition of a sentence for the firearm specification attendant to his conviction for having weapons while under disability was discretionary.

{¶ 44} "Under R.C. 2929.14(B)(1)(b), a trial court may not impose more than one prison term for firearm specifications for felonies that were committed as part of the same act or transaction." *State v. Boyd*, 2d Dist. Clark No. 2018-CA-68, 2019-Ohio-1902, ¶ 31. R.C. 2929.14(B)(1)(g), however, creates an exception. It provides:

> If an offender is convicted of * * * two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of * * * a specification of the type described

> under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted * * * and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

{¶ 45} Walters was convicted of two felonies and multiple specifications that fell under R.C. 2929.14(B)(1)(a)(v). We conclude that the court was required to sentence Walters on the mandatory, consecutive 54-month firearm specifications attached to both Count 1 (purposeful murder) and Count 9 (having weapons while under disability).

{¶ 46} Walters fifth assignment of error is overruled.

{¶ 47} Having overruled all of Walters's assigned errors, the judgment of the trial court is affirmed.

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WELBAUM, P.J. and LEWIS, J., concur.