

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

STATE OF OHIO

Appellee

v.

WILLIAM H. CALHOUN

Appellant

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C.A. No. 2025-CA-37

Trial Court Case No. 23-CR-089

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

LEWIS, P.J., and HANSEMAN, J., concur.

OPINION
CLARK C.A. No. 2025-CA-37

KIMBERLY KENDALL CORRAL, Attorney for Appellant
JOHN M. LINTZ, Attorney for Appellee

HUFFMAN, J.

{¶ 1} William H. Calhoun appeals from a judgment entry of conviction on one count of aggravated murder, two counts of murder, two counts of felonious assault, one count of attempted murder, and one count of improperly discharging a firearm at or into a habitation, all with firearm specifications, as well as one count each of discharge of a firearm on or near prohibited premises and having weapons while under disability. For the following reasons, the judgment of the Clark County Common Pleas Court is affirmed.

Facts and Procedural History

{¶ 2} Calhoun, who is also known as O.Z., was indicted on the above nine counts and specifications on February 13, 2023. The events giving rise to the charges began in November 2022 when Calhoun shot Janiel Portman, who is also known as Pinhead, at the Wayside Tavern in Springfield. Portman did not cooperate with law enforcement, and Calhoun was not charged.

{¶ 3} On February 4, 2023, Calhoun returned to the Wayside Tavern in a Chevy Silverado around 6:00 p.m., and he remained there for six hours. When he left the bar, he was followed by a dark sedan occupied by three men, including Portman and Tyson DeArmond (“Tyson”). Multiple shots were fired from the sedan at Calhoun, and he returned fire. Calhoun eventually lost control of his Silverado, crashed, and fled on foot. Calhoun’s wife, Michael, picked him up after the crash, and the two went to another bar for a short time. Portman and Tyson were apprehended. Tyson’s driver’s license reflected a Liberty Street

address, and police learned that the dark sedan occupied by Portman and Tyson belonged to Racquel Fowler, who resided at the same Liberty Street location.

{¶ 4} Around 1:30 a.m. on February 5, 2023, Calhoun and his wife received a phone call from Jermaine Fleming, an inmate at the Southeast Correctional Institution. While on the recorded call, they learned that Tyson had been arrested and that Portman was in the hospital. At the end of the call, Calhoun stated, “The update is: I’m going to Racquel’s house and opening her door up.”

{¶ 5} Twenty minutes after the call, Calhoun proceeded to Fowler’s home on Liberty Street, where Nakesha DeArmond (Nakesha), Briana DeArmond (Briana), and Christian DeArmond (Christian) were present to celebrate Fowler’s birthday. Calhoun rang the doorbell, and Briana opened the door. Calhoun opened fire inside the home, and then he went outside and shot into the house before fleeing. A 911 call was made from the residence, and when police responded, Calhoun was identified by witnesses as the shooter. Fowler died at the scene, having been shot three times. Christian was also shot but survived.

{¶ 6} Calhoun was initially assigned appointed counsel but then retained Attorney R. Over the next several months, the parties filed multiple motions. Relevant to Calhoun’s appeal, on May 24, 2023, the State filed a “suggestion of conflict,” noting that Attorney R. also represented Portman, who had been charged with obstructing official business for fleeing from the police. Calhoun also retained Attorney L. for the limited purpose of advising him about any potential plea offers. On July 7, 2023, a hearing was held on the suggestion of conflict. Calhoun filed a signed waiver of conflict on July 17, 2023, which the court accepted.

{¶ 7} On May 19, 2025, at the start of the lengthy jury trial on this matter, the State identified another potential conflict after learning that Attorney R. also represented Christian

in an unrelated matter. Calhoun indicated that he was aware of the representation and that he waived any potential conflict, and the court accepted the waiver.

{¶ 8} Seventeen witnesses testified for the State, three did so for Calhoun, and the trial court admitted nearly 300 exhibits. The jury found Calhoun guilty of all charges and specifications. On May 25, 2025, he filed a motion for a mistrial based on prosecutorial misconduct, which the trial court overruled. Calhoun was sentenced to an aggregate term of life without parole. He timely appealed.

Assignments of Error and Analysis

I. Potential Conflicts of Interest

{¶ 9} In his first assignment of error, Calhoun argues that the trial court failed to inquire into the nature and extent of potential conflicts of interest arising out of defense counsel's representation of Portman and Christian. As to Portman, Calhoun argues that the court instructed him to sign the waiver "prior to even hearing the details of the conflict." He directs our attention to the following trial court statement discussing Attorney L.'s representation: "I think that's one of the reasons *they* brought [Attorney L.] in." According to Calhoun, the identity of "they" was never resolved, "but it was clearly not [Calhoun] as the Court was speaking to [Calhoun]."

{¶ 10} Calhoun argues that it is "alarming" that at the hearing Attorney L. requested a sidebar out of Calhoun's earshot in which Attorney L. stated that he intended to remain on the case. He notes that Attorney L.'s appearance was not mentioned again on the record and that Attorney L.'s name did not appear on any subsequent transcripts.

{¶ 11} Calhoun argues that when the State advised the court that the potential conflict with Portman arose from the same matter involving Calhoun, Attorney R. indicated that he represented Portman in "another matter in some other capacity." Calhoun asserts that

Attorney R. stated he was “not adverse” to either client when the issue was instead whether Calhoun’s and Portman’s interests were contrary to each other. Calhoun contends that Attorney R. relied on information derived from his representation of Portman at the hearing, such that further inquiry was required. According to Calhoun, there “is nothing in the record to indicate whether Portman executed a conflict waiver.” Regarding Christian, Calhoun notes that he (Calhoun) initially indicated that he did not want to waive the conflict in response to a question by the court, but that the court “rejected” this answer and again inquired if he wanted to waive the conflict. Calhoun argues that both potential conflicts existed throughout his trial and sentencing. He claims that the trial court failed to inquire as to whom Attorney R. had initially represented and whether Attorney R.’s other clients had executed waivers. Calhoun asserts that the court’s entry “avoids making any finding as to whether there [was] a conflict or whether it [was] waivable.” According to Calhoun, that Portman and Christian did not testify is not dispositive, and the case “must be remanded.”

{¶ 12} Calhoun asserts that the record “is entirely void of what facts, law, logic or ethical rules would permit an attorney to be conflict free to offer trial counsel to a defendant in a case where a conflict ethically prohibits that same attorney from counseling as to whether to waive his trial rights to enter a plea.” According to Calhoun, “that [Attorney R.] was conflicted out of plea negotiations is dispositive.”

{¶ 13} Calhoun further argues that a “discussion on the record is insufficient if it does not determine the nature of the conflict and its effect.” He asserts that he was informed of only potential conflicts but the “effect of an actual conflict [was] never explained” to him. Calhoun claims that the court’s questioning of him “constitutes neither an admonition of the possible ramifications of conflict nor is it a valid waiver of [his] Sixth Amendment right to conflict free counsel.” Calhoun argues that while he signed a waiver as to Portman, no

waiver was signed as to Christian, “and the oral record is ambiguous.” He argues that an abuse of discretion is demonstrated.

{¶ 14} Finally, Calhoun argues that actual prejudice occurred. He directs our attention to the bill of particulars, which stated that on February 4, 2023, suspects believed to be Portman and Tyson fired at Calhoun’s vehicle, and that on February 5, 2023, Calhoun attempted to murder Christian. Calhoun contends that the bill of particulars put Attorney R. on notice that Portman was an alleged “suspect” in Calhoun’s case and that Christian was an alleged victim in Calhoun’s case. Calhoun notes that on June 2, 2023, Attorney R. filed a motion to suppress in which an issue was Portman not identifying Calhoun as his assailant at the Wayside Tavern. According to Calhoun, any alleged “harm is not speculative,” because the State’s case-in-chief adduced police testimony identifying Calhoun as Portman’s assailant, which required Attorney R. to call Portman to impeach this evidence, something Attorney R. himself had stated would require disqualification. Calhoun notes that bullet casings found in Fowler’s car (occupied by Portman) matched those found at the scene where gunfire was exchanged between Calhoun’s and Fowler’s vehicles.

{¶ 15} Calhoun further states that on April 26, 2023, Attorney R. filed a motion to compel medical and police records related to Christian, and that the motion was never addressed. In the motion, Attorney R. argued that records pertaining to Christian’s injuries were “a crucial part of the Defense,” necessary to adequately prepare for trial, as well as “*Brady* material.” Calhoun claims that, despite that assertion, after accepting representation of Christian, Attorney R. “ceased all pursuit of these materials which he perceived to be *Brady*.” Calhoun argues that the “importance of Christian’s testimony to the defense strategy is obvious and apparent but the defense was not in a position to call [Christian] due to his actual conflict.”

{¶ 16} “Although fundamental, the right to counsel is not absolute.” *State v. Hackney*, 2021-Ohio-2064, ¶ 10 (6th Dist.), citing *State v. Ross*, 2018-Ohio-3524, ¶ 6 (9th Dist.). “A defendant has no right to an attorney with a conflict of interest.” *Id.*, citing *Ross* at ¶ 6. “An actual conflict or even “a showing of a serious potential for conflict” will justify a trial court’s removal of a defendant’s counsel of choice.” *Id.*, quoting *Ross* at ¶ 6, quoting *Wheat v. United States*, 486 U.S. 153, 164 (1988). “This is because trial courts have an “independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.”” *Id.*, quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006), quoting *Wheat* at 160.

{¶ 17} Prof.Cond.R. 1.7 governs conflicts of interest involving current clients and states:

(a) A lawyer’s acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(1) the representation of that client will be directly adverse to another current client;

(2) there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by the lawyer’s own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

(1) the lawyer will be able to provide competent and diligent representation to each client;

(2) each affected client gives informed consent, confirmed in writing;

(3) the representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

(1) the representation is prohibited by law;

(2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

{¶ 18} Comment 38 of the rule states: “Division (c)(2) does not address all nonconsentable conflicts. Some conflicts are nonconsentable because a lawyer cannot represent both clients completely and diligently or both clients cannot give informed consent.”

{¶ 19} A conflict of interest “involves circumstances in which regard for one duty tends to lead to disregard of another duty, such as when there is representation of multiple clients with incompatible interests.” *State v. Dyer III*, 2024-Ohio-3421, ¶ 40 (2d Dist.), quoting *State v. Hathaway*, 2015-Ohio-5488, ¶ 14, citing *State v. Gillard*, 64 Ohio St.3d 304, 552-553 (1992). “A possible conflict of interest exists where the interests of the defendant *may* diverge at some point, so as to place the attorney under inconsistent duties, but an actual conflict of interest is shown where during the course of the representation the defendants’ interests *do* diverge with respect to a material factual or legal issue or to a course of action.” (Emphasis in original.) *Id.*, quoting *State v. Seals*, 2005-Ohio-4837, ¶ 16

(2d Dist.), citing *Gillard* at 552-553. “In order to demonstrate an actual conflict of interest based upon what an attorney has failed to do, a defendant must demonstrate that [some] plausible alternative defense strategy or tactic that has sufficient substance to be at least viable might have been pursued but was not undertaken due to the attorney’s conflicting loyalties or interests.” *Id.*, quoting *Hathaway* at ¶ 14, citing *Gillard* at 553.

{¶ 20} “An attorney representing multiple defendants in criminal proceedings is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop during the course of the trial.” *Dyer III* at ¶ 39, quoting *Seals* at ¶ 14. “Where a trial court knows or reasonably should know of an attorney’s possible conflict of interest in the representation of a person charged with a crime, the trial court has an affirmative duty to inquire whether a conflict of interest actually exists.” *State v. McClure*, 2015-Ohio-5203, ¶ 9 (12th Dist.), quoting *Gillard* at 311.

{¶ 21} “Trial courts enjoy broad discretion when considering motions to disqualify counsel.” *In re E.M.J.*, 2017-Ohio-1090, ¶ 5 (9th Dist.), citing *Phillips v. Haidet*, 119 Ohio App.3d 322, 324 (3d Dist. 1997). “We review a trial court’s determination regarding a motion to disqualify counsel for an abuse of discretion.” *Id.*, quoting *Avon Lake Mun. Utils. Dept. v. Pfizenmayer*, 2008-Ohio-344, ¶ 13 (9th Dist.). “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 2013-Ohio-966, ¶ 34, citing *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). Most instances of abuse of discretion occur when a trial court makes a decision that is unreasonable. *State v. Gilbreath*, 2022-Ohio-3759, ¶ 8 (2d Dist.), citing *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). “A decision is unreasonable if there is no sound reasoning process that would support that decision.” *Id.*, quoting *AAAA Ents.* “Absent an abuse of discretion on the part of the trial court in making

the ruling, its decision must be affirmed.” *State v. Ogletree*, 2014-Ohio-3431, ¶ 11 (2d Dist.), quoting *State v. Xie*, 62 Ohio St.3d 521, 527 (1992).

1. Portman

{¶ 22} At the start of the thorough hearing regarding the alleged conflict in Attorney R.’s representation of Calhoun and Portman, the court initially asked Attorney L. to explain his role in the matter. Attorney L. stated that he had been retained by Calhoun “to represent him with any potential offers that would be made by the Prosecution in this case and to advise him of any conflict of interest that may be present. That’s the scope of my responsibilities at this time.”

{¶ 23} After reviewing Prof.Cond.R. 1.7 (a), the court indicated that “there are ways to get around those conflicts of interest in a matter such as this, that a client could sign a waiver of any potential conflict.” The court stated, “If we would proceed in this matter, I would require Mr. Calhoun to sign a waiver of conflict that would be on record.” The court then read Prof.Cond.R. 1.7(c) to Calhoun and advised him as follows:

So, Mr. Calhoun, the concern the Court has and what we want to make sure doesn’t happen is that you never feel like you’re getting the raw end of the deal. I want you, with your representation, to feel like you had every opportunity to present your case, to be heard in your case without any potential conflicts; and I’m going to let the State speak to why they believe there may be a potential conflict. I’m going to give [Attorney R.] an opportunity to speak to why he doesn’t believe there’s conflict, or if he does believe there’s a conflict, why it’s waivable. And then I want to address you and see if you still, after hearing from the State and hearing from your attorney, if you still want [Attorney R.] to represent you. And I think that’s one of the reasons they

brought [Attorney L.] in; and again I'm going to let your attorney speak to this, but that [Attorney L.] then could represent you to make sure that if there was some type of an offer made that would put [Attorney R.] in a conflict, that your interest is still being represented.

But I want you to be confident in that; and in doing so, I want you to sign a document waiving that; and even with all of that, the Court's going to have to make a determination of whether or not I believe that there's a conflict pursuant to [Prof.Cond.R. 1.7(c)] of this that would make it so that [Attorney R.] could not represent you.

{¶ 24} Prosecutor S. then advised the court that the State believed that Portman and Tyson shot at Calhoun, and Prosecutor S. was concerned about Attorney R.'s representation of Portman, a potential witness for the State. She stated that negotiations between Attorney R. and each client "would clearly be adverse between the clients," and if the State called Portman, Attorney R. would not be able to cross-examine him "to any effect." The prosecutor stated that there was a "substantial risk that the attorney's ability to consider, recommend, or carry out [an] appropriate course of action for each client could be impaired." The prosecutor noted that independent counsel had to be hired for the purpose of negotiating any plea offers, and she indicated that she did not believe such a conflict was waivable, even with informed consent. Prosecutor S. urged the court to disqualify Attorney R. based on the adverse interests of Calhoun and Portman. The court noted that Portman's case was being handled in a separate courtroom.

{¶ 25} Attorney L. then asked to approach the bench. He stated that he had spoken to the prosecutor two weeks earlier and "no offer ha[d] been made by the State." Prosecutor H. then advised the court that Attorney L. had just entered his appearance and that the State

“wasn’t going to make an offer to someone that wasn’t even representing the client.” He indicated that he had “had discussions” with Attorney R. before Attorney L. became involved. Prosecutor H. stated, “I don’t think that [Attorney L.] can be a straw man for [Attorney R.]”

{¶ 26} Attorney L. then told the court: “Your Honor, my client ha[s] independent counsel. It’s directly affecting this case completely. I plan on staying on this case. I am expecting an offer so that I can convey that to my client as an independent [counsel]. I don’t believe [Attorney R.’s] right now able to do that” The court asked Attorney L. if his entry of appearance had put him “immediately in the same boat as [Attorney R.],” and Attorney L. reiterated that he had been independently retained. Attorney R. advised the court that there “was discussion that there may be an offer coming and I can’t receive it and it was based on that limited conversation, but then [Attorney L.] came into the picture.” The sidebar concluded.

{¶ 27} Attorney R. indicated that if Portman were to testify, he could not represent Calhoun and that if Calhoun were to testify against Portman, he could not represent Portman. Attorney R. stated, “[T]hose boundaries are clear.” He advised, “I am not aware of any requests or realistic potential to have any of my clients testify against any of my other clients.” Attorney R. stated that he had received suggestions from the Ethics Committee of the Ohio Supreme Court, and that because there was only a “theoretical possibility” of conflict in terms of testimony, “that would not be enough to disqualify a lawyer from representation, particularly when they have independent counsel to advise them on what their possibilities are.” He argued that there “were safeguards in place with independent counsel.”

{¶ 28} Attorney R. stated that the “idea that counsel for the State has not approached [Attorney L.] with any realistic offers for Mr. Calhoun to consider would just demonstrate the

theoretical nature of this and not really something that actually exists as far as a conflict.” He read aloud a waiver that he drafted and stated that he went over it with Calhoun. Attorney R. indicated that if “there would be a change of heart of Mr. Calhoun or an offer that’s made that he really just can’t refuse, then I will willingly withdraw and then notify the Court of a clear conflict; but right now we’re at a theoretical stage where the State is simply throwing out a possibility that something may or may not exist”

{¶ 29} In response to a question by the court, Attorney R. stated that if Portman were subpoenaed to testify in Calhoun’s trial, “another hearing needs to be had concerning whether or not it’s realistic that he would be testifying and under what terms; and I don’t think I would be invited to that hearing” He opined that “the Court has enough notice to know if that date is coming and be able to respond to it.” Attorney R. indicated that he was “not aware of any offer specific or even in general to Mr. Portman,” and that he was able to represent Calhoun to his fullest ability. He stated that if the State made an offer to Attorney L., he did not need to be informed of it, “and [if] there’s negotiations to be worked out, then I will willingly withdraw from the case or not be involved in those discussions, and I don’t think I could represent Mr. Portman at that point either.”

{¶ 30} Attorney L. stated that he was awaiting an offer and an opportunity to discuss it with Calhoun and consider any defenses he may have. He indicated that he would represent Calhoun “completely if an offer is made that he accepts” and that he would then “be doing the plea hearing and disposition.”

{¶ 31} In response to questions from the court, Calhoun indicated that he understood the proceedings and the basis of the potential conflict and that he wanted Attorney R. to represent him. He further expressed confidence in Attorney L.’s ability to represent him as Attorney L. indicated.

{¶ 32} Prosecutor S. then referred the court to Note 38 under Prof.Cond.R. 1.7. She advised that “the State has made overtures with respect to what kind of offer we would be willing to make, but the fact that we cannot make a firm offer is part and parcel of the problem here.” She asked, “[H]ow is [Attorney R.] to go over with Mr. Calhoun Mr. Portman’s role in this incident?” She emphasized that “the facts and circumstances surrounding this case include things done by Mr. Portman.” She indicated that even if Portman did not testify in Calhoun’s case, other witnesses would testify to those facts and circumstances. She described Portman as a “key player in those circumstances.”

{¶ 33} Attorney R. responded that Portman had been charged only with obstruction for fleeing from the police and that his and Calhoun’s interests were not adverse “to this point.” The court asked Calhoun to “execute that waiver so that I can also have that to consider in this matter, that you did in fact have presented to you in open court a waiver of any potential disqualification, sir.” Calhoun executed the waiver which stated:

Circumstances exist that may disqualify [Attorney R.] from representing you in this matter. You may/may not have information pertaining to another case in which [Attorney R.] represents the Defendant.

The undersigned Defendant believes that despite the conflict that may/may not exist, [Attorney R.] will represent him fairly and to the best of his ability. The undersigned Defendant acknowledges that he has had adequate time to discuss this matter with [Attorney R.] and separate counsel of the potential conflict.

The undersigned hereby waives any potential conflict pertaining to the representation of [Attorney R.], pursuant to Ohio Rules of Professional

Conduct 1.7. The undersigned wishes to continue the representation of [Attorney R.] in this matter. This waiver is in no way solicited by [Attorney R.].

{¶ 34} The court's written decision on the issue states:

The Court gives great deference to an individual defendant who has chosen, and hired his own attorney to represent him. In addition, it is clear that the defendant has been advised of the potential conflict and has executed a waiver pursuant to Ohio Rules of Professional [Conduct] 1.7.

While this Court is not making an ultimate decision as to the ethical obligations of defense counsel, the Court believes as far as the "suggestion of conflict" that the defendant may proceed with current counsel under the current set of facts. These facts and obligations could change at any time but the Court is not going to guess at what those changes may be before they happen.

Therefore at this time the Court believes that the Defendant may proceed with current counsel.

{¶ 35} Our complete review of the hearing record reflects that Calhoun's brief vastly mischaracterizes the record. The transcript demonstrates that the trial court, as it expressly indicated it would, sufficiently inquired of the State, Attorney R., and Calhoun regarding the nature of any possible conflict of interest arising from Attorney R.'s representation of Portman. While Calhoun inaccurately suggests that the court instructed him to execute the waiver prior to any inquiry, the court merely advised him that he "*could*" execute a waiver "*if* we would proceed in this matter" *after* the court heard from the parties and reached its own conclusion on the issue. At the start of the colloquy, the record reflects that the court's reference to "they" in "they having brought in Attorney L." referred to Attorney R. and Calhoun, to further protect Calhoun's interest in conflict-free representation.

{¶ 36} Calhoun does not state the basis for his “alarm” regarding the sidebar requested by Attorney L. That Attorney L. failed to appear again in the record is consistent with his indication that the scope of his representation was limited to advising Calhoun regarding any plea offers.

{¶ 37} Calhoun also does not identify the information upon which Attorney R. allegedly relied that was “derived” from his representation of Portman. Because Portman’s matter was set in a separate courtroom, there would have been no reason for Portman to execute a waiver of conflict in Calhoun’s case. While Calhoun argues that the fact that Attorney R. “was conflicted out of plea negotiations is dispositive” of an actual conflict, Attorney R. and Attorney L. repeatedly advised the court that Attorney L. was retained as a safeguard.

{¶ 38} Regarding Calhoun’s position that Attorney R. had been required to call Portman based on police testimony identifying Calhoun as Portman’s assailant at the Wayside Tavern incident, a showing of an actual conflict is not demonstrated. Attorney R. was in the best position to determine the existence of a conflict, and he denied any realistic potential that Portman would testify. Portman was also not charged in the shooting that transpired between Fowler’s vehicle and Calhoun’s vehicle. Attorney R. made his willingness to withdraw clear in the event an actual conflict creating divergent interests arose. Consistent with this representation, the court’s entry acknowledged that though Attorney R.’s obligations might have been subject to change, the court would not conjecture regarding what may or may not occur in the future. Because Calhoun has failed to identify a plausible tactic of sufficient substance that Attorney R. failed to pursue due to his alleged conflicting loyalties, an abuse of discretion is not demonstrated as to Portman.

2. Christian

{¶ 39} At the start of trial, Prosecutor H. advised the court that in April 2025, Attorney R. had entered an appearance in another case for Christian, the victim of attempted murder, and that a waiver of conflict was required. Attorney R. indicated that his representation of Christian was in “a completely unrelated matter” and that he had discussed the issue with Calhoun. The court noted to Calhoun that “we’ve been through this before,” and it ascertained that Calhoun had discussed any potential issue as to Christian with Attorney R. and that Calhoun was confident in his representation. The following exchange occurred:

THE COURT: And do you want to waive any potential conflict of interest that might exist in Mr. Rion’s representing you and a potential alleged victim in this matter, sir?

DEFENDANT: No, sir.

THE COURT: So you want to waive that conflict, sir?

DEFENDANT: Yeah.

The court then accepted the oral waiver, noting that Calhoun had been properly advised about any potential conflict by Attorney R. and that they both wished to proceed.

{¶ 40} Again, Calhoun mischaracterizes the record in arguing, first, that the court “rejected” Calhoun’s initial negative response to the court’s question regarding waiver and, second, that the “oral record is ambiguous.” Prior to the court’s question, Attorney R. had advised that his representation of Christian had no connection to Calhoun’s trial, that he had discussed the issue with Calhoun, and that the court was aware that Calhoun was resolute about Attorney R. representing him. In other words, the court merely elucidated what Attorney R. and Calhoun already had represented to the court.

{¶ 41} Finally, although Calhoun argues that Christian’s medical records and testimony were crucial to Calhoun’s defense strategy, he does not explain why that was so, and Attorney R. was in the best position to determine the existence of a conflict. It was undisputed that Christian was shot at Fowler’s home. An abuse of discretion is not demonstrated as to Christian, and Calhoun’s first assignment of error is overruled.

II. Other Acts Evidence

{¶ 42} In his second assignment of error, Calhoun argues that the trial court erred in admitting evidence of the November 2022 shooting of Portman by Calhoun at the Wayside Tavern. He directs our attention to the testimony of Detective Justin Massie of the Springfield Police Division, the first witness to testify for the State. Massie stated that he viewed November 21, 2022 surveillance video from the Wayside Tavern depicting Calhoun shooting Portman. According to Calhoun, the “jury was immediately and fatally prejudiced by the introduction of irrelevant opinion testimony.” He claims that the “facts presented here [did] not meet the definition of [m]otive” but suggested his “propensity or inclination to commit a shooting crime.” Calhoun argues that “because this evidence was the first evidence put before the jury, it colored the jury’s bias throughout the presentation of every single item of evidence presented to them,” and “no corrective instruction was offered to mitigate that prejudice.”

{¶ 43} The State concedes that the connection between Calhoun’s 2022 shooting of Portman and the subsequent shooting at Fowler’s home is “a bit attenuated” but asserts that it was nevertheless admissible to show the chain of events that led to the final shooting. According to the State, it was not intended to show Calhoun’s propensity for violence.

{¶ 44} The record reflects that on May 14, 2025, the State filed a notice pursuant to Evid.R. 404(B) indicating that it intended to prove that the motive for Calhoun’s actions on

February 5, 2023, arose from a chain of events beginning with the November 2022 shooting of Portman by Calhoun. The motion stated that the events were “inextricably intertwined,” that the evidence of the November shooting was not offered as character evidence, and that the evidence was admissible under Evid.R. 404(B)(2). The State indicated that Attorney R. had been provided with video evidence of the November 2022 shooting as part of discovery and that the shooting was “discussed as a motive by several individuals in recordings provided by the State.”

{¶ 45} The motion was addressed at the start of trial, and the State advised the court that the purpose of the evidence was to establish Calhoun’s motive. The court initially allowed the State to introduce the evidence for that purpose. After Attorney R. asserted that the evidence established only the motive for Portman to shoot at Calhoun, the State responded that the evidence “shows the history” and “chain of events.” According to the prosecutor, the evidence would also help the jury to understand how Calhoun put together “who was chasing him and why he eventually goes where he goes,” and “so [the evidence was for] motive, but it [was] also lack of mistake, lack accident.” The trial court noted that the evidence was offered “not just for motive but also . . . intent, preparation and plan,” and that “it [was] a cluster of these things that [led] up to the admissibility of this evidence,” and the State agreed. The court indicated that it would “allow the evidence in general.”

{¶ 46} “A hallmark of the American criminal justice system is the principle that proof that the accused committed a crime other than the one for which he is on trial is not admissible when its sole purpose is to show the accused’s propensity or inclination to commit crime.” *State v. Hartman*, 2020-Ohio-4440, ¶ 20, quoting *State v. Curry*, 43 Ohio St.2d 66, 68 (1975). This principle “is premised on our understanding of human nature: the typical juror is prone to ‘much more readily believe that a person is guilty of the crime charged

if it is proved to his satisfaction that the defendant has committed a similar crime.” *Id.*, quoting *State v. Hector*, 19 Ohio St.2d 167, 174-175 (1969).

{¶ 47} Evid.R. 404(B)(1) states that “[e]vidence of any other crime, wrong or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Evid.R. 404(B)(2) provides that evidence of other crimes, wrongs or acts may be admissible to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” “Motive evidence establishes that the accused had a specific reason to commit a crime.” *Hartman* at ¶ 48.

{¶ 48} To be admissible under Evid.R. 404(B)(2), the “key is that the evidence must prove something other than the defendant’s disposition to commit certain acts.” *Id.* at ¶ 22. In other words, “while evidence showing the defendant’s character or propensity to commit crimes or acts is forbidden, evidence of other acts is admissible when the evidence is probative of a separate, nonpropensity-based issue.” *Id.*

{¶ 49} As noted by the Third District:

“Evid.R. 404(B) only applies to limit the admission of so-called ‘other acts’ evidence that is ‘extrinsic’ to the crime charged. *State v. Stallworth*, 11th Dist. Lake No. 2013-L-122, 2014-Ohio-4297 [2014 WL 4825273], ¶ 37. In other words, ‘Evid.R. 404(B) does not apply when the acts are intrinsic as opposed to extrinsic, i.e., the acts are part of the events in question or form part of the immediate background of the alleged act which forms the basis for the crime charged.’ *State v. Wainscott*, 12th Dist. Clermont No. CA2015-07-056, 2016-Ohio-1153 [2016 WL 1090789], ¶ 19, citing *State v. Crew*, 2d Dist. Clark No. 2009 CA 45, 2010-Ohio-3110 [2010 WL 2643302], ¶ 99.”

State v. Grant, 2023-Ohio-2720, ¶ 57 (3d Dist.), quoting *State v. Gawron*, 2021-Ohio-3634, ¶ 43 (7th Dist.).

{¶ 50} Other acts “are inextricably intertwined with a charged crime when they are so blended or connected with the charged crime that proof of one incidentally involves the other, explains the circumstances thereof, or tends logically to prove any element of the crime charged.” *State v. Sinclair*, 2003-Ohio-3246, ¶ 35 (2d Dist.), citing *State v. Wilkinson*, 64 Ohio St.2d 308, 317 (1980). “Other acts” evidence “is inextricably intertwined with charged conduct when testimony about the other acts is ‘necessary to give the complete picture of what occurred.’” *Id.*, quoting *Wilkinson* at 318.

{¶ 51} “Trial court decisions regarding the admissibility of other-acts evidence under Evid.R. 404(B) are evidentiary determinations that rest within the sound discretion of the trial court. Appeals of such decisions are considered by an appellate court under an abuse-of-discretion standard of review.” *State v. Morris*, 2012-Ohio-2407, syllabus.

{¶ 52} We agree with the State that the connection between the November shooting of Portman and the February shooting at Fowler’s home is somewhat attenuated in terms of motive; the record is clear that the exchange of gunfire between Calhoun’s and Fowler’s vehicles prompted Calhoun to almost immediately retaliate. The November shooting was nevertheless inextricably intertwined with the exchange of gunfire between the vehicles and the final shooting at Fowler’s home. The evidence established conflict between Portman and Calhoun ahead of Portman shooting at Calhoun’s vehicle, which led to the shooting at Fowler’s home. Put differently, evidence of the November 2022 shooting was necessary to provide the complete picture of what occurred, and the court did not err in admitting the evidence. In the absence of an abuse of discretion, Calhoun’s second assignment of error is overruled.

III. Notice

{¶ 53} In his third assignment of error, Calhoun argues that the indictment and bill of particulars failed to satisfy his right to notice of the essential facts constituting his felonious assault offenses. He claims that the bill of particulars did “not address who the felonious assault charges [were] against,” noting that numerous people were present in Fowler’s home when the shooting occurred.

{¶ 54} “Section 10, Article I of the Ohio Constitution provides that ‘no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury.’” *State v. Horner*, 2010-Ohio-3830, ¶ 8. Crim.R. 7(B) explains the structure and sufficiency requirements of an indictment: “The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged.” *Id.*

{¶ 55} “An indictment is ‘sufficient if it can be understood that the offense was committed at some time prior to the time of the filing.’” *State v. Lackey*, 2015-Ohio-5492, ¶ 65 (2d Dist.), citing *State v. Sellards*, 17 Ohio St.3d 169, 171 (1985). “The purpose of a grand jury indictment has always been to give notice to the accused: ‘[A] criminal offense must be charged with reasonable certainty in the indictment so as to apprise the defendant of that which he may expect to meet and be required to answer; so that the court and jury may know what they are to try, and the court may determine without unreasonable difficulty what evidence is admissible.’” *Horner* at ¶ 10, quoting *Horton v. State*, 85 Ohio St. 13, 19 (1911).

{¶ 56} Crim.R. 12(C)(2) states that defenses and objections based on defects in the indictment must be raised before trial. The failure to raise any objections based on such defects prior to trial results in a waiver of those defenses or objections. *State v. Schmidt*, 2014-Ohio-758, ¶ 7 (3d Dist.), citing *Horner* at ¶ 46, citing Crim.R. 12(C)(2). Calhoun did not raise such an objection to the indictment, so his argument was accordingly waived. Even if waiver did not apply, however, Calhoun was provided proper notice for the following reasons.

{¶ 57} Crim.R. 7(E) governs bills of particulars and states:

When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial, or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charged and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

“[T]he purpose of a bill of particulars is *not* to provide the defendant with specifications of the evidence or to serve as a substitute for discovery; rather, the purpose of a bill of particulars is to ‘elucidate or particularize the conduct of the accused.’” (Emphasis in original.) *State v. Latorres*, 2001 WL 901045, *3 (11th Dist. Aug. 10, 2001), quoting *State v. Lawrinson*, 49 Ohio St.3d 238, 239 (1990), citing *State v. Sellards*, 17 Ohio St.3d 169 (1985).

{¶ 58} Count 3 of the indictment charged that Calhoun caused the death of another as a proximate result of committing or attempting to commit felonious assault. Count 4 of the indictment charged felonious assault. Count 5 charged attempted murder, and Count 6 charged felonious assault. The bill of particulars stated that Calhoun attempted to murder

Christian with a rifle in Fowler's home. It is clear that the felonious assault counts related to Fowler and Christian, the only victims of the shooting, despite the presence of others in the home; the bill of particulars went beyond the information provided in the indictment and adequately particularized Calhoun's conduct which resulted in the indictment. Even if Calhoun's assignment of error had not been waived, it lacks merit and is overruled.

IV. Sufficiency of the Evidence

{¶ 59} In his fourth assignment of error, Calhoun asserts that the State failed to present sufficient evidence of felonious assault and attempted murder against Christian. He argues that the "only evidence presented regarding the shooting of Christian was eye witness Nakesha DeArmond."

{¶ 60} A sufficiency of the evidence argument relates to whether the State "presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, 2009-Ohio-525, ¶ 10 (2d Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380 (1997). "In essence, sufficiency is a test of adequacy. Whether the evidence is sufficient to sustain a verdict is a question of law." *Thompkins* at 386.

{¶ 61} The test for sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259 (1991):

An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

Id. at paragraph two of the syllabus. In other words, on review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Thompkins* at 390.

{¶ 62} With respect to Calhoun's attempted murder conviction, R.C. 2923.02(A) provides that "[n]o person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense [of murder]." Calhoun was specifically convicted of attempted murder in violation of R.C. 2903.02(A), which prohibits a person from purposefully causing the death of another. As for Calhoun's felonious assault offense, he was convicted of a violation of R.C. 2903.11(A)(2). That statute provides that no person shall knowingly "[c]ause or attempt to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance."

{¶ 63} At trial, Detective Joshua Emory of the Springfield Police Division testified that he responded to Fowler's home on the report of a shooting. Ten minutes of video and audio from his cruiser and body cameras (beginning at 2:24 a.m.) were played for the jury, and the recordings capture witnesses on scene identifying Calhoun as the perpetrator. Emory testified that "[t]hey said O.Z. and then yelled William Calhoun." Christian can also be heard identifying himself by name and indicating that he had been shot. Emory testified that Christian sustained a gunshot wound to his right buttock. According to Emory, Christian "gave me a brief description of him diving on the ground and [the shooter] saying, 'You all just tried to kill me.'" Emory identified a photo of Christian's gunshot wound.

{¶ 64} Nakesha DeArmond testified that Christian and Tyson are her brothers, Christian was Fowler's stepson, and Calhoun and her sister India have a child together. Upon learning that Tyson had been arrested, Nakesha stated that she went to Fowler's home to let her know. Nakesha testified that while she was at Fowler's house, Calhoun rang the doorbell and stood in the doorway holding a gun. According to Nakesha, she clearly saw his face, and Calhoun "lift[ed] the gun up with both hands and he started shooting." Nakesha called 911, stating that "people are shot." Nakesha identified her voice on Emory's video implicating Calhoun as the shooter. A video of Nakesha in the back seat of a police cruiser was also played in which she identified Calhoun as the shooter while speaking to law enforcement.

{¶ 65} Briana DeArmond, another of Nakesha's sisters, testified that she answered the door at Fowler's home when Calhoun rang the bell. She stated that O.Z. looked at her, and she clearly saw his face. Calhoun then looked at Fowler and "pull[ed], coming from his right hand, a long black gun and start[ed] shooting in her direction." Briana testified that she ran up the stairs to a bedroom, and when she heard her nephew trying to get in, she told him to "call the police because O.Z.'s shooting."

{¶ 66} India DeArmond testified that on February 5, 2023, after receiving a phone call from Nakesha, she called Calhoun repeatedly while driving to Fowler's home. After Fowler was pronounced dead, and in the presence of law enforcement outside, India received a call from Calhoun. Detective Miller of the Springfield Police Division was immediately made aware of the incoming call, and he was able to record it as India spoke to Calhoun. The call was played for the jury, and in it, India demanded to know why, when Calhoun was "beefing with Pinhead," he went to Fowler's home. India testified that she called Calhoun back, and that call was also recorded and played for the jury. Near the end of the call, after denying

that he was at Fowler's home, Calhoun stated, "If you keep playing with me, I'll double back and that bitch will be smoked when she gets out of the hospital."

{¶ 67} Detective Miller, who obtained evidence from Calhoun's phone via a search warrant, testified that he listened to a 30-minute call from Jermaine Fleming to Calhoun. The call originated from the Southeast Correctional Institution where Fleming was incarcerated and was made at 1:28 a.m., about 50 minutes before the shooting at Fowler's home. It was recorded by the prison and played for the jury. Calhoun's wife, Michael, was an intermittent participant in the call. Therein, Calhoun described being shot at and wrecking his vehicle. During the conversation, Michael stated that she had learned that Tyson's name "came across the police scanner" and that Portman had been taken to the hospital. Christian was also mentioned as having the same birthday as Tyson. Calhoun stated, "[A]ll my enemies became friends." At the end of the call, Calhoun stated, "The update is, I'm going to Racquel's house and opening her door up."

{¶ 68} A second call from Fleming to Calhoun, from 3:03 p.m., was played for the jury. Calhoun stated in the call that "the only place I'm going is to jail." Attorney R. was mentioned by name in the call.

{¶ 69} Finally, a third call from Fleming to Calhoun, from 6:49 p.m., was played for the jury. Calhoun's tone in the call is markedly quiet, with long pauses in his speech. He stated that his name was "on the internet" for "aggravated murder." He further related that he "ain't coming home," and "a lawyer can't help me."

{¶ 70} Having examined the evidence in a light most favorable to the State, the record supports a conclusion that, if believed, the evidence would have convinced the average mind of Calhoun's guilt as to the shooting of Christian beyond a reasonable doubt. After reviewing the evidence, any rational trier of fact could have found the essential elements of attempted

murder and felonious assault proven beyond a reasonable doubt. Christian was shot, and Calhoun was the only person firing a weapon. Since sufficient evidence supported Calhoun’s convictions as to Christian, his fourth assignment of error is overruled.

V. Constitutionality of R.C. 2923.13(A)(2)

{¶ 71} In his fifth assignment of error, Calhoun argues that his conviction for having weapons while under disability “must be overturned because R.C. 2923.13(A)(2) is unconstitutional” on its face. Citing the two-part test enunciated by the Supreme Court in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022), he claims that the first prong of the test is satisfied, and we “must move to the second prong.”

{¶ 72} “[W]hether a statute is unconstitutional is a question of law that is reviewed de novo.” *State v. King*, 2024-Ohio-4585, ¶ 14 (8th Dist.), citing *Cleveland v. State*, 2019-Ohio-3820, ¶ 14, citing *Crutchfield Corp. v. Testa*, 2016-Ohio-7760, ¶ 16. “[S]tatutes carry a strong presumption of constitutionality.” *Id.*, citing *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 419 (1994), citing *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955).

{¶ 73} R.C. 2923.13 states:

(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

. . .

(2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

{¶ 74} First, Calhoun failed to raise any objections at trial regarding the constitutionality of R.C. 2923.13(A)(2). Accordingly, he has forfeited all but plain error. *State v. Quarterman*, 2014-Ohio-4034, ¶ 16; Crim.R. 52(B). “Plain error exists where there is an obvious deviation from a legal rule which affected the defendant’s substantial rights, or influenced the outcome of the proceeding.” *State v. Robinson*, 2015-Ohio-4649, ¶ 9 (12th Dist.), citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). “Notice of plain error is taken with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice.” *Id.*, citing *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶ 75} “The Second Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides, ‘A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.’” *State v. Barber*, 2025-Ohio-1193, ¶ 15 (1st Dist.), quoting U.S. Const., amend. II. In *Bruen*, “the Supreme Court of the United States established a two-step test for courts to employ when considering Second Amendment challenges to statutes regulating firearms.” *Id.*, citing *State v. Storms*, 2024-Ohio-1954, ¶ 12 (1st Dist.). “Courts first must ask whether the ‘Second Amendment’s plain text covers an individual’s conduct.’” *Id.* at ¶ 17, quoting *Bruen*, 597 U.S. at 24. “If so, the ‘Constitution presumptively protects that conduct.’” *Id.*, quoting *Bruen* at 24. “Under step two, the State bears the burden of justifying the challenged law by affirmatively ‘demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.’” *Id.* at ¶ 18, quoting *Bruen* at 24. “The State must carry its burden by compiling a record of historically permissible firearms laws ‘relevantly similar’ to the firearm regulation being challenged.” *Id.*, quoting *Bruen* at 29. “The State bears this

burden and courts need not search for evidence on behalf of the State.” *Id.*, citing *Bruen* at 25, fn. 6, and *Storms* at ¶ 17.

{¶ 76} “In June 2024, the U.S. Supreme Court offered some clarification for its holding in *Bruen* in *United States v. Rahimi*, [602 U.S. 680 (2024)]. *King*, 2024-Ohio-4585, at ¶ 27 (8th Dist.). “*Rahimi* held that ‘[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.’” *Id.*, quoting *Rahimi* at 702. “*Rahimi* specifically noted that ‘[s]ince the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.’” *Id.*, quoting *Rahimi* at 690. *Rahimi* concluded that “the appropriate [Second Amendment] analysis involves considering whether the challenged regulation is consistent with principles that underpin our regulatory tradition.” *Id.* at 692.

{¶ 77} “A facial challenge to a statute is much more difficult to overcome than an as-applied challenge because, generally, for a statute to be found unconstitutional, ‘it must be [found] unconstitutional in *all* applications.’” (Emphasis added in *King*.) *King* at ¶ 17, quoting *State v. Ramage*, 2014-Ohio-783, ¶ 7, citing *Oliver v. Cleveland Indians Baseball Co. Ltd. Partnership*, 2009-Ohio-5030, ¶ 13. “In other words, it must be shown that there is no set of facts under which the statute would be valid.” *Id.*, citing *Ramage* at ¶ 7. “Extrinsic facts are not needed to determine whether a statute is facially unconstitutional.” *Id.* *King*, which addressed a facial challenge to the portion of R.C. 2923.13(A)(2) directed at any juvenile adjudication for an offense that, if committed by an adult, would have been a felony offense of violence, noted that R.C. 2923.13(A)(2) “also allows for ‘any felony offense of violence’ to serve as the predicate disability” to a having weapons while under disability charge. *Id.* at ¶ 18. The Eighth District concluded that, “under a facial challenge, [it] would have to find that

both of these predicate disabling offenses are facially unconstitutional based on the precedent that a facial challenge must prove unconstitutional in *all* applications pursuant to *Romage* and *Oliver*.” *Id. King* determined, based on *Bruen* and *Rahimi*, “that R.C. 2923.13(A)(2) is not facially violative of the constitutional protections guaranteed by the Second Amendment.” *Id.* at ¶ 27.

{¶ 78} Detective Miller identified a judgment entry of conviction, in *State v. Calhoun*, Clark County C.P. No. 2009-CR-994 (April 23, 2010), reflecting that Calhoun had previously been convicted of aggravated assault. Miller testified that the felony offense prevented Calhoun from possessing a firearm and served as the basis of the having weapons while under disability offense. Based on the foregoing, plain error is not demonstrated, and Calhoun’s challenge to the second prong of the analysis fails. R.C. 2923.13(A)(2) is consistent with preventing individuals who threaten physical harm to others from misusing firearms, and the statute is not unconstitutional on its face. Calhoun’s fifth assignment of error is overruled.

VI. Prosecutorial Misconduct

{¶ 79} In his final assignment of error, Calhoun argues that the trial court erred in denying his motion for a mistrial based upon prosecutorial misconduct. He claims that an abuse of discretion is demonstrated.

{¶ 80} “Mistrials need to be declared only when the ends of justice so require and a fair trial is no longer possible.” *State v. Carbaugh*, 2023-Ohio-1269, ¶ 79 (5th Dist.), quoting *State v. Franklin*, 62 Ohio St.3d 118, 127 (1991). “The standard of review for evaluating a trial court’s decision to grant or deny a mistrial is abuse of discretion.” *Id.*, citing *State v. Maurer*, 15 Ohio St.3d 239 (1984). “In reviewing a claim that a mistrial should have been granted, the Ohio Supreme Court has noted ‘[t]his court has . . . adopted an approach which

grants great deference to the trial court's discretion in this area, in recognition of the fact that the trial judge is in the best position to determine whether the situation in his courtroom warrants the declaration of a mistrial." *Id.*, quoting *State v. Shaffer*, 2004-Ohio-3717, ¶ 18 (5th Dist.), quoting *State v. Widner*, 68 Ohio St.2d 188 (1981).

{¶ 81} "The test for prosecutorial misconduct is whether remarks [or prosecutors' actions] were improper and, if so, whether they prejudicially affected substantial rights of the accused." *State v. Jones*, 90 Ohio St.3d 403, 420 (2000), citing *State v. Smith*, 14 Ohio St.3d 13, 14 (1984). "The touchstone of the analysis 'is the fairness of the trial, not the culpability of the prosecutor.'" *State v. Garrett*, 2022-Ohio-4218, ¶ 144, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982). "Where it is clear beyond a reasonable doubt that a jury would have found the defendant guilty even absent the alleged misconduct, the defendant has not been prejudiced, and his conviction will not be reversed." *State v. Stevenson*, 2008-Ohio-2900, ¶ 42 (2d Dist.), citing *State v. Loza*, 71 Ohio St.3d 61, 78 (1994).

{¶ 82} In rebuttal closing argument, the prosecutor stated: "Ladies and gentlemen, you just heard from . . . one of the greatest story tellers in Clark County. I hope you enjoyed him, but don't believe him. Ladies and gentlemen, every move is calculated. Believe the evidence."

{¶ 83} After the court instructed the jury, Attorney R. stated: "I just want the record to reflect that the prosecutor used language to attack my credibility personally by saying that I'm the greatest Clark County story teller, that there was laughter in the box or in the back of the courtroom. I just think the conduct is - - it was unfair." In his motion for a mistrial, Attorney R. noted the prosecutor's comments and further argued that the "worst" part of the closing argument was the Powerpoint presentation by the State in which Calhoun's statement "no lawyer can help me now" was displayed.

{¶ 84} At disposition, the court found the prosecutor’s statements “actually to be complementary to Defense Counsel.” It ruled that it “cannot find without those comments that the jury would not have found the Defendant guilty beyond a reasonable doubt.”

{¶ 85} In the course of trial, the jury heard Calhoun himself state, “No lawyer can help me now.” Although the State characterized Attorney R. as a storyteller, the prosecutor emphasized the evidence over Attorney R.’s characterization thereof. Most significantly, the evidence of Calhoun’s guilt was overwhelming, and the record strongly supports the trial court’s conclusion that he would have been found guilty in the absence of the alleged prosecutorial misconduct. Calhoun’s sixth assignment of error is overruled.

Conclusion

{¶ 86} The trial court did not abuse its discretion in accepting Calhoun’s waiver of potential conflicts of interest. An abuse of discretion is not demonstrated in the admission of “other acts” evidence. The indictment and the bill of particulars gave proper notice to Calhoun of the essential facts constituting his felonious assault offense. Sufficient evidence supported Calhoun’s convictions involving Christian. Plain error is not demonstrated as to Calhoun’s conviction under R.C. 2923.13(A)(2) because the statute is not unconstitutional on its face. The trial court did not abuse its discretion in overruling Calhoun’s motion for a mistrial based on alleged prosecutorial misconduct. The trial court’s judgment is affirmed.

.....

LEWIS, P.J., and HANSEMAN, J., concur.