[Cite as *State v. Olinger*, 2026-Ohio-4695.]

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

STATE OF OHIO	:	
	:	C.A. No. 2026-CA-4
Appellee	:	
	:	Trial Court Case No. 2025CR0099
v.	:	
	:	(Criminal Appeal from Common Pleas
TENYETTA M. OLINGER	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**
	:	

. . . . . .

Pursuant to the opinion of this court rendered on November 25, 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,



CHRISTOPHER B. EPLEY, JUDGE

TUCKER, J., and HANSEMAN, J., concur.

OPINION
GREENE C.A. No. 2026-CA-4

JOHN A. FISCHER, Attorney for Appellant
MEGAN A. HAMMOND, Attorney for Appellee

EPLEY, J.

{¶ 1} Tenyetta M. Olinger appeals from her conviction of assault. Olinger asserts that the trial court erred by denying her request for a jury instruction regarding defense of another. She further contends that her conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. For the following reasons, the trial court's judgment is affirmed.

I. Facts and Procedural History

{¶ 2} On February 28, 2025, Olinger was indicted in the Greene County Common Pleas Court on one count of assault (Count I), one count of endangering children in violation of R.C. 2919.22(B)(3) (Count II), and one count of endangering children in violation of R.C. 2919.22(B)(1) (Count III). The State later filed a motion to dismiss Count II and to have Count III re-numbered as Count II. The trial court granted the State's motion, and, on November 10, 2025, the matter proceeded to a jury trial on the remaining counts.

{¶ 3} The State's evidence at trial indicated that the victim was an eight-year-old student at Fairborn City Schools. He attended the Greene County Educational Service Center ("ESC") and participated in the Intensive Needs Classroom Program ("INC"), which serves children with profound special needs. The victim had been previously diagnosed with developmental delays, ADHD, anxiety disorder, trauma and stress-related disorder, and suspected autism spectrum disorder. He was also non-verbal and dependent on his caregivers for his basic hygiene and care needs. Olinger was employed by the ESC as a

teacher's aide and was assigned to the victim's INC classroom. One of Olinger's responsibilities was helping students get onto the bus to go home at the end of the school day.

{¶ 4} On January 28, 2025, while getting ready to leave the classroom and board the school bus home, the victim resisted Olinger's attempt to put on his harness, which is a safety vest that can be secured to the bus seat to prevent students from moving around the bus while it is moving. After Olinger was eventually able to put the victim's harness on, she requested help from another teacher's aide to get the victim from the classroom to the bus. They proceeded to carry the victim to the bus with Olinger holding the victim's right arm and leg, and the other aid holding his left arm and leg.

{¶ 5} Surveillance footage introduced at trial showed Olinger and the other aide carrying the victim to the stairs of the bus, at which point the bus aide, Keana Bartolome, took his arms and pulled him up the steps onto the bus. The victim then grabbed Bartolome's hair and glasses with his right hand. Olinger moved the victim's hand away from Bartolome, and the other teacher's aide took hold of the victim's left hand so that he was separated from Bartolome. Olinger maneuvered the victim toward the rear of the bus while holding onto his right hand with her right hand and his harness with her left hand. While the victim was still under Olinger's control, Olinger forcefully pushed him into the seat, and the victim's face hit the metal side of the bus. Olinger then attached the victim's harness to the seat and left the bus. The victim sustained a black eye and a knot above his eye.

{¶ 6} At the conclusion of the State's case and outside the presence of the jury, Olinger's counsel requested that the court instruct the jury regarding defense of another, because Olinger had used force against the victim to defend Bartolome. However, the trial court overruled this request, finding that Olinger had failed to introduce any evidence that

would support a finding of self-defense or defense of another.

{¶ 7} Following its deliberations, the jury found Olinger guilty of both offenses. The trial court merged the offenses, and the State elected to proceed to sentencing on assault. On January 9, 2026, the trial court sentenced Olinger to a term of 15 months in prison.

{¶ 8} Olinger now appeals, raising two assignments of error.

II. Jury Instruction on Defense of Another

{¶ 9} In her first assignment of error, Olinger asserts that the trial court erred by denying her request for a jury instruction on defense of another. Specifically, Olinger contends that she presented sufficient evidence that, at the time of the incident, she was acting in defense of Bartolome. We disagree.

{¶ 10} Jury instructions must be given when they are correct, pertinent, and timely presented. *State v. Barker*, 2022-Ohio-3756, ¶ 17 (2d Dist.). It is well-settled that a person may act in self-defense, defense of another, or defense of that person's home. *See* R.C. 2901.05(B)(1). "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 person used the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person's residence. *Id*. "Defense of another requires proof of the same elements as self-defense." *State v. Murray*, 2025-Ohio-1485, ¶ 24 (2d Dist.), quoting *State v. Cumberlander*, 2024-Ohio-2431, ¶ 41, fn. 9 (10th Dist.). Notably, R.C. 2901.05(B)(1) places the initial burden of presenting such evidence on the defendant. *State v. Cunigan*, 2026-Ohio-3887, ¶ 108. "[I]f the defendant's evidence and any reasonable inferences about that evidence would allow a rational trier of fact to find all the elements of a self-defense claim when viewed in the light

most favorable to the defendant, then the defendant has satisfied the burden." *State v. Messenger*, 2022-Ohio-4562, ¶ 25.

{¶ 11} Specifically, to warrant an instruction on defense of another, there must be evidence presented that supports the conclusion that the defendant used force to defend another. Different standards apply depending on whether the defendant responded with deadly or non-deadly force. *Barker* at ¶ 19, 22. Self-defense involving the use of non-deadly force requires evidence that: (1) the defendant was not at fault in creating the situation giving rise to the altercation; (2) the defendant had reasonable grounds to believe and an honest belief, even if mistaken, that another person was in imminent danger of bodily harm; and (3) the only means of protecting the other person from that danger was by the use of force not likely to cause death or great bodily harm. *Id.* at ¶ 24. "A person who uses force in defense of others 'stands in the shoes' of the person he or she is defending. This rule means that the intervenor 'acts at his [or her] own peril if the person assisted was in the wrong.' If the person being defended had no right to self-defense, the intervenor is not entitled to use force to defend that person, and cannot prevail on a 'defense of others' defense." *State v. Belcher*, 2013-Ohio-1234, ¶ 47 (2d Dist.), quoting *State v. Wenger*, 58 Ohio St.2d 336, 339 (1979).

{¶ 12} We review a trial court's denial of a requested jury instruction for an abuse of discretion. *Id.* at ¶ 44. The term "abuse of discretion" implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "It is to be expected, however, that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary." *State v. Malloy*, 2012-Ohio-2664, ¶ 24 (2d Dist.).

{¶ 13} With respect to the first element of self-defense, there is no dispute that the victim was initially combative with Bartolome while getting on the bus, and Olinger had not

created that situation. However, when considering the two remaining elements, it is important to acknowledge that, at the time Olinger used force to get the victim into his seat, the altercation between Bartolome and the victim had ended. Immediately following the altercation between the victim and Bartolome, Olinger was able to gain control of the victim and maneuver him towards his seat on the bus and away from Bartolome. Further, because the victim and Bartolome had been separated prior to Olinger's use of force, Olinger could not have reasonably believed that Bartolome was in imminent danger of bodily harm that required the use of force. Instead, at the time Olinger used force against him, the victim was not attempting to hurt her or anyone else, and Olinger had control of the victim's body and movements. Therefore, the trial court did not abuse its discretion when it declined to provide a defense of another instruction to the jury.

{¶ 14} Olinger's first assignment of error is overruled.

III. Sufficiency of the Evidence and Manifest Weight

{¶ 15} In her second assignment of error, Olinger asserts that her conviction was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶ 16} When reviewing the sufficiency of the evidence, the reviewing court considers the evidence in a light most favorable to the prosecution to determine whether the evidence at issue, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. McClain*, 2026-Ohio-3934, ¶ 20. Notably, the reviewing court does not consider whether the State's evidence was sufficient to convince a jury of a defendant's guilt beyond a reasonable doubt. *Id.* at ¶ 21. Rather, the court must evaluate whether the State produced adequate evidence of each element of the charged offense. *Id.*

{¶ 17} Conversely, "[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is

more believable or persuasive." *State v. Wilson*, 2009-Ohio-525, ¶ 12 (2d Dist.). When reviewing an argument challenging the weight of the evidence, an appellate court "must defer to the fact-finder's witness-credibility determinations" and may not substitute its view for that of the trier of fact. *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 38. Rather, we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 1997-Ohio-52, ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶ 18} "Ordinarily, courts must have conflicting evidence to conduct a manifest-weight review." *Reillo* at ¶ 30. In the absence of conflicting evidence, an appellate court may nevertheless conclude that the fact-finder lost its way when there is "internally contradictory testimony as to material facts, direct impeachment, or fantastical testimony clearly undermines a witness's credibility on a cold record." *Id*. at ¶ 31. "Mere inconsistencies" are insufficient to overcome the deference afforded to the fact-finder's credibility determinations. *Id*. at ¶ 32. "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin* at 175.

{¶ 19} Olinger was found guilty by the jury of assault in violation of R.C. 2903.13(A). and of endangering children in violation of R.C. 2919.22(B)(1). Due to the merger of these offenses, she was convicted of assault only. Thus, we will address her sufficiency and weight of the evidence arguments only with respect to assault. *See State v. Primou*s, 2020-Ohio-912, ¶ 30 (8th Dist.) (when counts in an indictment are allied offenses and there is sufficient

evidence to support the offense on which the State elects to have the defendant sentenced, this court need not consider the sufficiency of the evidence on the merged counts because any error would be harmless.")

{¶ 20} Pursuant to R.C. 2903.13(A), no person shall knowingly cause or attempt to cause physical harm to another or to another's unborn. "If the offense is committed by a caretaker against a person with a functional impairment under the caretaker's care, assault is a felony of the fourth degree. R.C. 2903.13(C)(2).

{¶ 21} A "person with a functional impairment" is defined as "any person who has a physical or mental impairment that prevents the person from providing for the person's own care or protection or whose infirmities caused by aging prevent the person from providing for the person's own care or protection." R.C. 2903.10(A). A "caretaker" is defined as "a person who assumes the duty to provide for the care and protection of a person with a functional impairment on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction."

{¶ 22} "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct with probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of the offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact." R.C. 2901.22(B).

{¶ 23} Olinger asserts that the jury's finding of guilt on assault was not supported by sufficient evidence and was against the manifest weight of the evidence because she lacked

the requisite mental state. Specifically, she contends that she had no choice but to intervene and try to gain control of the victim. Olinger refers to the incident as "a perfect storm" due to some of the children being released to the bus at the same time and resulting in an overwhelming situation for the bus staff. She further asserts that she had no intention of harming or abusing the victim and, in attempting to get him to his seat, both Olinger and the victim "tumbled into the seat, where the child bumped his head on the window."

{¶ 24} However, "[c]ulpable mental states are frequently demonstrated through circumstantial evidence," and "[a] defendant's state of mind may be inferred from the totality of the circumstances." *State v. Leigh*, 2023-Ohio-91, ¶ 23 (2d Dist.). In this case, the evidence submitted at trial, including the surveillance footage of the incident, established that Olinger had control of the victim at the time of the incident; he was not threatening her safety or anyone else's when she forced him into his seat. She aggressively forced him into the seat, hitting his face and head on the window, at which point the victim immediately began crying in pain. Olinger was aware that the victim's arms were not free to break his fall or protect his face and head.

{¶ 25} There was clearly sufficient evidence for the jury to find that Olinger acted with the requisite mental state with respect to assault under R.C. 2903.13(A). Further, there is nothing in the record to suggest that the jury lost its way or that its finding of guilt created such a miscarriage of justice that the conviction must be reversed. Rather, the record clearly demonstrates that Olinger was fully aware of the risks associated with her conduct towards the victim and disregarded those risks, resulting in his injuries.

{¶ 26} Olinger's second assignment of error is overruled.

IV. Conclusion

{¶ 27} The judgment of the trial court is affirmed.

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TUCKER, J., and HANSEMAN, J., concur.