[Cite as *State v. Creager*, 2025-Ohio-5608.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA6
	:	
v.	:	
	:	DECISION AND JUDGMENT
JASON R. CREAGER,	:	ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

L. Scott Petroff, Athens, Ohio, for appellant.

Anneka P. Collins, Highland County Prosecutor, Adam J. King, Highland County Assistant Prosecutor, Hillsboro, Ohio, for appellee.

Smith, P.J.

{¶1} Jason R. Creager, "appellant," appeals the April 12, 2024 Judgment Entry of Confinement of the Highland County Court of Common Pleas. At a jury trial, appellant was convicted of strangulation and domestic violence against his partner at the time, S.L. On appeal, appellant challenges the trial court's evidentiary rulings and the sufficiency and weight of the evidence supporting his conviction for strangulation.

{¶2} Based on our full review of the record and evidence presented at trial, appellant has not raised meritorious arguments. Accordingly, the assignments of error are hereby overruled and the judgment of the trial court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

{¶3} Appellant and S.L. were involved in an altercation at her home on September 13, 2023. At S.L.'s request, a neighbor contacted law enforcement. Appellant was subsequently arrested and indicted on Count One, Strangulation, a violation of R.C. 2903.18(B)(3), a felony of the fourth degree; and Count Two, Domestic Violence, a violation of R.C. 2919.25(A), a misdemeanor of the first degree.

{¶4} Appellant eventually proceeded to a jury trial on April 11, 2024. S.L., Sergeant J.D. Adams of the Highland County Sheriff's Office, and appellant testified. Despite the officer's testimony and photographic exhibits, the case was essentially a "he said/she said" matter. At the close of trial, appellant was convicted of both counts. The trial court imposed a sentence of 15 months on Count One and 6 months on Count Two, to be served concurrently.

{¶5} This appeal followed. Additional relevant facts are set forth below.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT EXCLUDED EVIDENCE THAT WAS NECESSARY TO APPELLANT'S DEFENSE, IN VIOLATION OF DUE PROCESS AS AFFORDED BY ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION AND THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

II. THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND BASED UPON INSUFFICIENT EVIDENCE IN VIOLATION OF APPELLANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

Mootness

{¶6} Before we can address appellant's assignments of error, we must first determine whether his appeal is moot. Appellant was released from prison on May 7, 2025. He remains under the supervision of the Adult Parole Authority.

{¶7} Generally, an offender who has completed his sentence must sustain his burden of demonstrating a collateral disability or loss of civil rights stemming from that conviction. *See State v. Sherman*, 2025-Ohio-976, at ¶ 10 (1st Dist.); *State v. Wilson,* 41 Ohio St.2d 236, 237 (1975). A

collateral disability is an adverse legal consequence of a conviction or judgment that survives despite the court's sentence having been satisfied or served. *State v. O'Mara,* 2024-Ohio-757, ¶ 23 (2d Dist.). Felony convictions result in collateral disabilities as a matter of law. *State v. Golston*, 71 Ohio St.3d 224, 227-228 (1994). *See Sherman, supra. See also State v. Smith*, 2024-Ohio-5168, at ¶ 11 (4th Dist.).[1]

{¶8} Herein, appellant challenges his conviction for strangulation, a fourth degree felony. Accordingly, this matter is not moot as appellant is under postrelease control.

{¶9} For ease of analysis, we first consider appellant's second assignment of error challenging the sufficiency and manifest weight of the evidence supporting his conviction for strangulation.

SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE

Standards of Review

{¶10} Under the Second Assignment of Error, appellant argues that the State failed to prove beyond a reasonable doubt all the elements of Strangulation, particularly, that appellant "cause[d] or create[d] a substantial risk of physical harm." First, appellant contends that the jury heard no

[1] " 'Where an appeal challenges a felony conviction, even if the defendant served the entire sentence before the appeal is heard, the appeal is not moot because the defendant "has a substantial stake in the judgment of conviction which survives the satisfaction of the judgment imposed upon him or her." ' " *Smith, quoting State v. Nieves,* 2022-Ohio-379, at ¶ 14 (8th Dist.), quoting *Gholston, syllabus*.

evidence that the effect on S.L.'s breathing caused her physical harm. Second, appellant contends that there was no evidence presented that the marks found on S.L. were caused by the act of strangulation rather than the incident of domestic violence. Appellant challenges both the sufficiency of the evidence and the manifest weight of the evidence supporting this conviction.

Sufficiency

{¶11} Whether the evidence presented at trial is legally sufficient to sustain a verdict is a question of law. *State v. Gonz*, 2024-Ohio-5885, at ¶ 10 (4th Dist.), citing *State v. Thompkins,* 78 Ohio St.3d 380, 386 (1997). Therefore, " '[t]he 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.' " *State v. Webb,* 2023-Ohio-4050, at ¶ 42 (4th Dist.), quoting *State v. Jenks,* 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, superseded by constitutional amendment on other grounds as stated in *State v. Smith,* 80 Ohio St.3d 89, 102 (1997), fn. 4, and following *Jackson v. Virginia,* 443 U.S. 307 (1979).

Manifest Weight of the Evidence

{¶12} "We observe that the 'question to be answered when a manifest-weight issue is raised is whether "there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt." ' " *State v. Whitehead*, 2022-Ohio-479, at ¶ 101 (4th Dist.), quoting *State v. Leonard*, 2004-Ohio-6235, ¶ 81, in turn quoting *State v. Getsy,* 84 Ohio St.3d 180 (1998). A court that is considering a manifest weight challenge must " 'review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses.' " *State v. Beasley*, 2018-Ohio-493, ¶ 208, quoting *State v. McKelton*, 2016-Ohio-5735, ¶ 328. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa,* 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31(4th Dist.). " 'Because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility.' " *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.). As the court in *Eastley v. Volkman*, 2012-Ohio-2179, explained:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption

> must be made in favor of the judgment and the finding of facts. * * *
>
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' "

Id. at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191-192 (1978).

{¶13} Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. *State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); *accord State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.); ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.").

{¶14} Accordingly, if the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude beyond a reasonable doubt that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *See Whitehead*, at ¶ 102; *accord Eastley* at ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting Black's Law Dictionary 1594 (6th ed.1990) (explaining that a judgment is not against the manifest weight of

the evidence when " ' "the greater amount of credible evidence" ' " supports it). A court may reverse a judgment of conviction only if it appears that the fact finder, when it resolved the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *accord McKelton* at ¶ 328. A reviewing court should find a conviction against the manifest weight of the evidence only in the " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; *accord State v. Clinton*, 2017-Ohio-9423, ¶ 166.

Legal Analysis

{¶15} The strangulation statute, R.C. 2903.18, became effective April 4, 2023. A violation of R.C. 2903.18(B)(3) is a fourth-degree felony when the victim is "a family or household member or is a person with whom the offender is or was in a dating relationship." R.C. 2903.18(C)(3). For appellant to be convicted of strangulation under R.C. 2903.18(B)(3), the state was required to introduce evidence that appellant knowingly "[c]ause[d] or create[d] a substantial risk of physical harm to another by means of strangulation or suffocation."

{¶16} Appellant argues that the jury heard no evidence that the effect on S.L.'s breathing caused her physical harm. Appellant also contends there was no evidence that the marks on S.L.'s neck were caused by the act of strangulation, as opposed to the incident of domestic violence. "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). "The intent with which an act is committed may be inferred from the act itself." *State v. Asp*, 2023-Ohio-290, ¶ 40 (5th Dist.).

{¶17} A "substantial risk" is "a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." R.C. 2901.01(A)(8). *See State v. Gary*, 2025-Ohio-851, at ¶ 28 (5th Dist.). "Physical harm" is "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). "Strangulation or suffocation" is "any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck, or by covering the nose and mouth." R.C. 2903.18(A)(1).

{¶18} Ohio courts have held that the testimony of one witness, if believed by the jury, is sufficient to support a conviction. *See State v. Williams,* 2017-Ohio-803, at ¶ 54 (5th Dist.); *State v. Jamison*, 49 Ohio

St.3d 182 (1990). As is well-established, the issue of witness credibility is a matter within the province of the jury. *Id.* We will now set forth the testimony of the three witnesses at appellant's trial.

S.L.

{¶20} S.L. testified she dated appellant "on and off" for two years. He was living with her on September 13, 2023. Days prior to the incident, the two had "started fighting" and she had asked him to leave her home.

{¶21} On September 13, 2023, S.L. came home from work around 5:30 p.m. Appellant was there. S.L. changed her clothes and went outside to close her pool for the season. Appellant yelled at her, accused her "of stuff," and she "kept telling him to leave." The yelling and arguing went on for 15 minutes.

{¶22} Appellant walked to the back of S.L.'s property, so S.L. ran inside and locked the doors. Appellant had a key and tried to get in. He eventually got in her kitchen door. S.L. testified appellant put his hands around her neck, started shoving her backwards, and shoved her into the refrigerator.

{¶23} S.L. testified:

> A: I started trying to get him off of me and I guess I must have hit him in the face because he said, "are you going to hit me, bitch." And then he grabbed me by the hair and threw me on the floor.

Q: Once you were on the floor where was he?

A: On top of me.

Q: What was happening then?

A: He was beating my head in the floor with one hand and he had his other hand on my neck.

Q: Was he demanding that you do something?

A: He said, "are you going to stop being a bitch now."

Q: What did you say?

A: And I said, "no."

Q: And then what happened?

A: Then he started beating my head on the floor again and I tried to scream for help, and then he covered my mouth and my nose with his hand.

Q: Did he ask you a question again?

A: He said, "how about now." And I said, "I'll do whatever you want me to do."

Q: When he first came in you said he put his hands around your throat, were you able to breathe when he did that?

A: At first, yeah.

Q: Were you able to breathe as he continued to hold on to your throat?

A: No.

> Q: When you were on the floor and he covered your face or your nose and mouth with his hand were you able to breathe when he did that?
>
> A: No.
>
> Q: After you told him you would do whatever he wanted, what happened?
>
> A: He said, "you're not going to call the fucking cops either." And then he shoved me down and got off me and then went around and started closing my curtains and my door curtains.
>
> Q: What did you do?
>
> A: I got up and I ran out my side door as fast as I could to the road, and I had to stop because there was traffic coming, and he opened the door and said, "can we please talk about this." And then as soon as I could I ran across to my neighbor's house.

{¶24} S.L. told her neighbor to call the police. When Sergeant Adams arrived, S.L. told him what happened. S.L. testified she felt pain in her face, neck, and head. Paramedics came. Sergeant Adams took pictures of her injuries.

{¶25} At this point, the prosecutor showed S.L. Exhibits 1, 2, 3, 4, 5, and 6, photographs. S.L. testified these photographs depicted her injuries as they appeared on September 13, 2023. Exhibit 2 showed marks on her neck. Exhibit 3 showed a picture of her chest. Exhibit 4 showed the back of S.L.'s head bleeding. These are the photographs Sergeant Adams took.

{¶26} S.L. also identified Exhibits 5 and 6, photographs taken the next day, September 14, 2023, which showed marks on S.L.'s neck. S.L. took these photographs and emailed them to Sergeant Adams. S.L. testified the marks on her face, neck, and head came from appellant's hands.

{¶27} On cross-examination, S.L. was questioned about the days leading up to September 13, 2023. On September 6, 2023, appellant was gone but had left his phone at S.L's house. S.L. admitted that a phone call came in from another woman. When appellant returned, S.L. accused him of "stepping out" on her. S.L. agreed that was when things "soured" between them. She was devastated when she found out about the other woman.

{¶28} S.L. admitted the two argued about the assumed infidelity throughout the week between September 6 and September 13, 2023. She admitted that she started some of the arguments. On September 13, 2023, they argued and she asked him to leave multiple times.

{¶29} S.L. admitted that when appellant put his hands around her neck and shoved her, she swung at him with both hands. S.L. testified the first time appellant pushed her to the floor, he banged her head 5 to 10 times. He had one hand around her neck and one hand in her hair. She admitted that she declined transport by the paramedics.

{¶30} On redirect, S.L. denied that the injuries to her head, throat and face had been self-inflicted.

Sergeant J.D. Adams

{¶31} Sergeant Adams testified that when he arrived he found S.L. at a neighbor's house. S.L. was crying, appeared highly distraught, and had visible injuries. Sergeant Adams authenticated Exhibits 1-4 as photographs he took of S.L.'s injuries. He identified Exhibits 5 and 6 as photographs S.L. emailed to him the next day. Sergeant Adams also testified that based on his training and experience, it is not odd for bruises to appear the next day.

{¶32} Sergeant Adams eventually made contact with appellant. Appellant stated that he had been attacked. He denied putting hands on S.L. Sergeant Adams identified Exhibits 7 and 8 as photographs of appellant. Exhibit 8 showed a mark on appellant's left arm. However, appellant declined medical attention. He was arrested at the scene.

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{¶33} Appellant testified that after September 6, 2023, the two were not getting along well. However, although S.L. accused him of being with another woman, she had not asked him to leave. Appellant was at her house on September 13, 2023, because it had rained and he wasn't working.

{¶34} Appellant testified on September 13, 2023, he made S.L. coffee before she went to work. As she was leaving, he said "I love you." He was building a flower bed during the day. S.L. came home once during the day. Nothing was out of the ordinary.

{¶35} When S.L. came home from work around 5:30 p.m., Appellant was in the kitchen making spaghetti. When S.L. came in, she had a beer bottle and she slammed it down near him. S.L. mumbled and said "F-U" and walked into the bedroom.

{¶36} When S.L. came back in the kitchen, appellant was still at the stove. She came to the refrigerator behind him and got a beer out and said "Hey." Appellant interpreted it as: "I'm sorry, let's just try to get along," so he stopped what he was doing. Appellant turned to her and said "Yeah." Then, S.L. started punching him. She seemed "pretty aggravated."

{¶37} Appellant denied striking or pushing S.L. She struck him three to four times and then he put his arm up because he had a sharp pain in his cheek. At this point, appellant said "I have had enough of this and I'm going to call the Sheriff's Department and they could figure it out and you can go to jail." Appellant denied grabbing her, pushing her into the refrigerator, putting hands on her, throwing her down, beating her head into the floor, and calling her a bitch.

{¶38} After appellant said he was calling the police, S.L. went into the bathroom. When she came out, she held her hair up and let him see her neck and chest. S.L. left and went to the neighbor's house. Appellant did not prevent her from calling the police. The only physical contact was when he raised his left arm because she was hitting him.

{¶39} Appellant identified Defendant's Exhibit B, a photograph of him at the jail that day. He testified it was an accurate picture of his eye.

{¶40} On cross-examination, appellant denied that S.L. was timid. He testified he called 911 on September 12 and 13. When asked if appellant was asking the jury to believe that S.L. injured herself, appellant replied: "I'm not asking them nothing, I'm just stating the truth."

{¶41} At this point, court recessed briefly so the prosecutor could verify any 911 calls from appellant. The prosecutor then called Sergeant Scott Miller of the Highland County Sheriff's Office on rebuttal. Sergeant Miller testified he works in communications. He had researched the jail phone system and 911 records. He could not find a record of any call from appellant's phone. On cross-examination, Sergeant Miller admitted that if a call was made but the caller hit "end" before it rang, there would not be a record.

{¶42} Based on the evidence presented at trial, we find that any rational trier of fact, construing the evidence most favorably to the prosecution, could have found beyond a reasonable doubt the element that appellant caused S.L. a substantial risk of physical harm. Here, S.L. testified appellant covered her mouth and nose with his hand. Although she testified she was able to breathe "at first," she subsequently testified she was not able to breathe as he continued to hold on to her throat. S.L. testified after the incident, she felt pain in her face, neck, and head. The State offered photographic evidence of S.L.'s injuries, specifically marks on her neck and chest. Sergeant Adams testified when he first encountered S.L., she had visible injuries.

{¶44} We further find that proof of substantial risk of physical harm is not against the manifest weight of the evidence. Again, the credibility determinations are in the province of the jury. The jury apparently found S.L.'s explanation of the physical harm she endured more believable than the defense's theory. We do not find that the jury lost its way in concluding that S.L. suffered physical harm and that it was caused by appellant.

{¶45} Appellant contends that the State's argument that " as soon as he [held his hands around her neck] and she struggled to breathe, he committed the crime of strangulation" and that "[it] is also strangulation

when he covers her nose and mouth with his hand which affects her breathing, that is strangulation," was incorrect and the jury was still required to find physical harm. The trial court instructed the jury that "strangulation…means any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck or by covering the nose or mouth." Black's Law Dictionary defines "impede" as "to obstruct; hinder; check; delay." *See* Abridged Sixth Edition, 1991.

{¶46} S.L. specifically testified that she could not breathe when appellant held her throat and when he covered her mouth and nose. We are mindful that the degree of harm that rises to the level of "serious" is not a precise science, especially since the statute utilizes descriptors such as "substantial," "temporary," "acute," and "prolonged." *See State v. Williams*, 2024-Ohio-5578, ¶¶ 51-52, citing *State v. Irwin,* 2007-Ohio-4996, ¶ 37 (7th Dist.). Moreover, whether physical injuries constitute serious physical harm is typically a question of the weight rather than the sufficiency of the evidence. *Id*., citing *State v. Salemi,* 2002-Ohio-7064, ¶ 34 (8th Dist.). We find no merit to appellant's argument.

{¶47} Appellant's assertion that the State did not present evidence that the marks on her neck were caused by strangulation as opposed to the act of domestic violence he was convicted of is also without merit. While

convictions from strangulation and domestic violence may merge where conduct arises "out of a single act with a single animus, and with a single victim," *See State v. Wilson*, 2025-Ohio-2996, at ¶ 25 (3d Dist.), we note that trial counsel did not ask to merge the convictions. Here, there was also evidence that appellant beat S.L.'s head against the floor multiple times, causing bleeding. The strangulation and beating appear to be two easily separated acts of violence, albeit in one incident.

{¶48} Based on the foregoing, we find that appellant's conviction for strangulation is supported by sufficient evidence and we also find that his conviction is not against the manifest weight of the evidence. Accordingly, this assignment of error is without merit and is hereby overruled.

EVIDENTIARY RULINGS

Standard of Review

{¶49} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Dean,* 2015-Ohio-4347, ¶ 91; *State v. Hinton*, 2025-Ohio-2291, at ¶ 16 (4th Dist.). Therefore, an appellate court will not disturb evidentiary rulings unless the trial court abused its discretion. *State v. Morris*, 2012-Ohio-2407, ¶ 14. A trial court abuses its discretion when the decision is "unreasonable, unconscionable, or arbitrary." *State v. Keenan,* 2015-Ohio-2484, ¶ 7.

Analysis

{¶50} Appellant asserts that the trial court's evidentiary rulings excluding evidence he proffered prevented him from presenting a complete defense. The United States Supreme Court has recognized that, "[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " (Internal citations omitted.). *Crane v. Kentucky,* 476 U.S. 683, 690 (1986), quoting *California v. Trombetta,* 467 U.S. 479, 485 (1984). *See also State v. Phillips*, 2025-Ohio-1235, at ¶ 8 (10th Dist.). However, although the right to present a defense is a fundamental element of due process of law, the right is not without limits. *See State v. Orr,* 2014-Ohio-4680, at ¶ 40 (8th Dist.); *Washington v. Texas,* 388 U.S. 14*,* at 19–21 (1967); *State v. Swann*, 2008-Ohio-4837, ¶ 13.

{¶51} The right to present a defense, as it relates to proffered testimony, has only been applied to "testimony [that] would have been relevant and material, and * * * vital to the defense." *United States v. Valenzuela-Bernal,* 458 U.S. 858, 867 (1982), quoting *Washington* at 16. Moreover, the testimony or evidence must otherwise be admissible under the rules of evidence. *Taylor v. Illinois*, 484 U.S. 400, 411 (1987). Thus, the

accused "must at least make some plausible showing of how [a witness's] testimony would have been both material and favorable to his defense." *Cleveland v. Alexander*, 2009-Ohio-4566, ¶ 27 (8th Dist.), quoting *Valenzuela-Bernal*. A defendant's interest in presenting evidence in his or her defense must " 'bow to accommodate other legitimate interests in the criminal trial process.' " *Rock v. Arkansas*, 483 U.S. 44, 55 (1987), quoting *Chambers* at 294, 295. As a result, state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a defense so long as they are not "arbitrary" or "disproportionate to the purposes they are designed to serve." *Rock* at 56.

{¶52} Generally, all relevant evidence is admissible. Evid.R. 402. *See Hinton, supra* at ¶ 17. Evid.R. 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401 and Evid.R. 402. However, a trial court must exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403. A trial court has broad discretion to determine whether to exclude evidence under

Evid.R. 403(A) and we will not interfere absent an abuse of discretion. *State v. Yarbrough*, 95 Ohio St.3d 227, 767 ¶ 40 (2002); *State v. Pennington,* 2024-Ohio-5681, ¶ 51 (4th Dist.).

{¶53} At trial, appellant sought to introduce evidence that on September 12, 2023, the night before the altercation and his arrest, that S.L. fired a gun out of the window of her home. Appellant contends that this evidence would have helped support the defense theory that S.L. escalated the arguments, became physically violent with him, and made a false allegation to the police. Appellant points out that the gun evidence was not remote, but instead was a continuing course of conduct occurring only the night before, and with him, as opposed to another person or alleged victim. Appellant also points out that the State had elicited testimony about S.L.'s character when he was asked if S.L. was "pretty timid," which directly contrasted his testimony. Appellant argues that the evidence of this alleged specific conduct was admissible under Evid. R. 405(B). Appellant also argues the evidence was admissible under Evid.R. 404(B) in order to show motive.

{¶54} This court discussed appellant's first argument in *State v. King*, 2025-Ohio-351, at ¶ 50, which in turn cited *State v. Steinhauer,* 2014-Ohio-1981 (4th Dist.). We observed in *King*:

> [A] defendant is allowed to introduce specific instances of the victim's prior conduct ... to establish defendant's state of mind." *Id*. at ¶ 24, citing *State v. Carlson*, 31 Ohio App.3d 72, 73 (8th Dist. 1986), paragraph one of the syllabus. But "[t]hese events are admissible in evidence, not because they establish something about the victim's character, but because they tend to show why the defendant believed the victim would kill or severely injure him." *Steinhauer*, citing *Carlson.* However, "Evid.R. 405(B) precludes a defendant from introducing specific instances of the victim's conduct to prove that the victim was the initial aggressor." *Steinhauer* at ¶ 29, citing *State v. Barnes*, 94 Ohio St.3d 21, 24 (2002). We held that, "[t]he critical issue is what the defendant knew about the alleged victim at the time of the confrontation." *Id*., citing *State v. Busby*, 1999 WL 710353 (10th Dist. Sept. 14, 1999).

{¶55 } Upon review, we find no abuse of discretion. While a defendant is allowed to introduce specific instances of the victim's prior conduct to establish the defendant's state of mind, we do not see how evidence of this alleged gun shooting incident the day prior fulfills the objective. Appellant's own testimony, which differed from S.L.'s, was that he had not been asked to leave during the week before the incident; that he made S.L. coffee before she left for work; that he told her he loved her as she was leaving; that he was working on a flower bed for her during the day; and that he was cooking her dinner when she came home and allegedly started the altercation. By Appellant's own testimony, if true, he did not

appear to be in a fearful state of mind on September 13, 2023 just prior to the altercation.

{¶56} Even if, arguably, the trial court somehow should have allowed the evidence of the alleged gun shooting, we do not see it as affecting the outcome of appellant's trial. As discussed above, S.L. testified in detail as to the events which happened in her kitchen on September 13, 2023. The jury credited S.L.'s version. Even if appellant had introduced the evidence of the alleged firing of the gun, it seems unlikely that the outcome of the trial would have been different.

{¶57} Appellant also asserts this proffered evidence was admissible under Evid.R. 404(B) to demonstrate S.L.'s motive. Evid.R. 404(B) provides, in pertinent part:

> (2) Permitted Uses; Notice. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The proponent of evidence to be offered under this rule shall:
>
> (a) provide reasonable notice of any such evidence the proponent intends to introduce at trial so that an opposing party may have a fair opportunity to meet it;
>
> (b) articulate in the notice the permitted purpose for which the proponent intends to offer the evidence, and the reasoning that supports the purpose; and

> (c) do so in writing in advance of trial, or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

See State v. Douglas, 2025-Ohio-2434, at ¶ 13 (4th Dist.).

{¶58} Again, upon review, we do not find an abuse of discretion. We fail to see how the exclusion of the alleged shooting out the window caused appellant to be unable to mount a complete defense. The most obvious observation is that appellant failed to provide the required notice of the evidence he sought to introduce. While appellant argues that evidence of a strained relationship is admissible, S.L. had already provided ample evidence of a strained relationship. Moreover, given the evidence discussed in our analysis of the prior assignment of error, we fail to see how the outcome of appellant's trial would have changed because of this one allegation.

{¶59} Next, appellant argues that the trial court abused its discretion by excluding evidence of the extent of his injuries, i.e., a tooth allegedly broken when S.L. hit him during the September 13, 2023 argument. The State responds that appellant was allowed to testify as to his own injuries and was not prevented from offering his version of the events.

{¶60} We agree with the State and find no abuse of discretion. Appellant testified that he had a sharp pain in his cheek. Appellant

identified Exhibit B, a photograph at him at the jail the day of his arrest. He testified the picture accurately reflected the condition of his eye. Upon review, the eye looks swollen. There was also a picture of a scratch on his arm.

{¶61} Appellant did not offer any medical exhibit or medical testimony establishing that he broke a tooth or that it occurred during the altercation. Any testimony that S.L. broke appellant's tooth when she allegedly hit him is unverifiable. Idle speculation is not admissible evidence. *See Mayo v. Kenwood County Club,* 134 Ohio Appl3d 336, 345 (1st Dist.1999). *See In re O.H.,* 2011-Ohio-5632, at ¶ 11 (9th Dist.). (Mother's medical prognosis, particularly in the absence of any medical evidence of her condition—is not a matter for lay speculation.)

{¶62} Based on the foregoing, appellant's first assignment of error is without merit and is hereby overruled.

{¶63} Having found no merit to either of appellant's assignments of error, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.