

**IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO**

STATE OF OHIO

Plaintiff - Appellee

-vs-

SAMUEL SHANK

Defendant - Appellant

Case No. 2025CA00114

Opinion And Judgment Entry

Appeal from the Court of Common Pleas, Case
No. 2025CR0641

Judgment: Affirmed

Date of Judgment Entry: September 22, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: KYLE L. STONE, VICKI L. DESANTIS, for Plaintiff-Appellee; D. COLEMAN BOND, for Defendant-Appellant.

King, P.J.

{¶ 1} Defendant-Appellant Samuel Shank appeals the August 7, 2025 judgment of conviction and sentence of the Stark County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio. We affirm the trial court.

Facts and Procedural History

{¶ 2} On May 13, 2025, the Stark County Grand Jury returned an indictment charging Shank with one count of felony murder, an unclassified felony, two counts of felonious assault, felonies of the second degree, and four counts of abduction, felonies of the third degree. Each count contained an attendant three-year firearm specification.

{¶ 3} Shank entered pleas of not guilty and elected to proceed to a jury trial which began on July 28, 2025.

{¶ 4} The charges stemmed from an altercation at the Old Landmark Tavern in Canton, Ohio on March 24, 2025. On that evening, Shank went to the Landmark to meet Michelle and Alyssa who both worked at a nearby Eurogyro. As a Eurogyro regular, Shank was acquainted with the two women. That evening he heard them talking about going to the Landmark after work and asked if he could join. The women obliged. While Michelle and Alyssa had been to the Landmark in the past, Shank had not.

{¶ 5} Michelle and Alyssa arrived at the Landmark around 10:30 p.m. Shank was already there. Also present at the bar were Brad, Phil, and John, long-time regulars, and Brad's friend Ryan who was at the bar for the first time at Brad's invitation. Ryan arrived after he got off work. He and Phil were the only sober patrons at the bar that evening. When Ryan arrived, he observed Shank stumbling around the bar, appearing to be quite intoxicated.

{¶ 6} When Michelle and Alyssa arrived, Shank was playing pool with John. Shank was bickering with John about who was stripes and who was solids. John eventually approached the bartender, Danielle, and asked for his pool money back because he no longer wished to play with Shank.

{¶ 7} Shank then asked Michelle to play. When Michelle was done playing, Shank began arguing with her, telling her she was not playing correctly. Then he started to say John was disrespecting him. At that point, everyone except Phil went outside to smoke.

{¶ 8} Outside, Shank began arguing with John again. Michelle intervened, said it was just a pool game and it was a stupid thing to fight about. Shank apologized to John and shook his hand. Also while outside, Shank approached Ryan, who is 6 foot 10, looked him up and down, and made a comment about his choice of beer. Recognizing that Shank was

looking for trouble, Ryan went back inside without engaging. John left to get food and returned shortly thereafter.

{¶ 9} Back inside, Brad, Ryan and Alyssa all sat next to each other at the bar. Shank came back inside, stood between Brad and Alyssa, looked over at Michelle and Phil who were also seated at the bar and started arguing with them. Shank then approached Michelle and got very close to her face. Michelle told him to get away from her and pointed towards the door. Shank smacked Michelle's hand away, then turned aggressively towards Phil. This was the first interaction Shank had with Phil that night. Michelle tried to pull Shank away from Phil and Shank responded by punching Michelle in the face.

{¶ 10} Phil and Brad stood up to break things up and Alyssa and Ryan approached to do the same. Brad is handicapped and fell to the floor at some point along with Shank and Phil. Phil was on his knees over top of Shank. Punches were thrown between Shank and Phil. As Ryan was reaching down to help Brad up, Shank drew a Taurus 9mm handgun out of his pants and shot Phil twice; once in the chest and once in the abdomen. Everyone but Brad, who was still on the floor, scattered to take cover.

{¶ 11} When Shank stood up, he turned his gun on everyone in the bar. He first pointed the gun at Brad, asked Brad if he wanted to die today and said he should kill him. He then directed Brad to get up and sit down, all while holding the gun on him.

{¶ 12} John was outside when shots were fired. Danielle yelled that she needed him inside when the fight broke out. As John entered the bar, Shank fired a shot at him and missed, also narrowly missing Ryan. John ran back outside and called 911.

{¶ 13} Initially, Shank refused to let anyone check on Phil or help him. He also continued brandishing the weapon, kept saying he was going to kill everyone, and claimed he

had already killed three people that day. Ryan has medic training and kept asking Shank if he could check on Phil. Ryan reasoned with Shank that it would be worse for him if Phil died and he should let him help. Ryan eventually talked Shank into letting everyone go.

{¶ 14} Stark County Sheriff's Department Detective Bryan Johnson investigated the matter. When deputies arrived at the scene around midnight, Phil was deceased. Three shell casings and the Taurus 9mm were collected at the scene. Shank was observed to be highly intoxicated. Johnson therefore waited until the following afternoon to interview him. In the meantime, Johnson reviewed security videos from the bar. Johnson noted that Shank had the gun tucked in his front waistband while in the bar. Approximately ten minutes before the shooting, Shank repeatedly appeared to be simulating drawing, aiming and shooting the weapon. The videos also showed Shank stumbling around the bar, falling into a wall at one point, and needing to lean against a wall in order to put his hoodie on. When Shank eventually approached Phil his body language was animated and angry.

{¶ 15} When Johnson interviewed Shank, Shank had little recollection of the evening before. He believed he was being held for the incident with John and was "10 out of 10 positive" about what happened that night. Shank had no recollection of the shooting until he was shown the video from the bar. Once he viewed the video he stated he would not have hit Michelle unless she touched him first. Shank also claimed that 76-year-old Phil started the whole thing and that he feared for his life. In a later recorded phone call from the jail, however, Shank stated things did not look good for him because he "started the whole thing."

{¶ 16} At trial, Shank took the stand in his own defense. He claimed he recalled everything that happened in detail and that he shot Phil in self-defense. Each patron of the

Landmark, however, testified to Phil's character as a peaceful individual who never raised his voice and drank very little. Indeed, the coroner testified Phil's blood alcohol level was .03.

{¶ 17} After hearing all the evidence and deliberating, the jury convicted Shank on each count of the indictment with the exception of one count of felonious assault. Shank was subsequently sentenced to an aggregate prison term of 29 years to life.

{¶ 18} Shank filed an appeal and the matter is now before this court for consideration. He raises four assignments of error as follows:

I

{¶ 19} "THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION AGAINST APPELLANT, AND THE CONVICTION MUST BE REVERSED."

II

{¶ 20} "THE APPELLANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PRESENTED, AND MUST BE REVERSED."

III

{¶ 21} "THE APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS RIGHTS UNDER THE 6th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION."

IV

{¶ 22} "THE TRIAL COURT PLAINLY ERRED BY FAILING TO PRESENT A JURY INSTRUCTION ON THE LESSER INCLUDED OFFENSE OF INVOLUNTARY

MANSLAUGHTER AND INFERIOR DEGREE OFFENSE OF AGGRAVATED ASSAULT."

I, II

{¶ 23} Because they are interrelated, we address Shank's first and second assignments of error together. In his first assignment of error, Shank argues the State failed to produce sufficient evidence to support his convictions for the abduction of Alyssa, Michelle, Ryan, and Brad. In his second assignment of error, Shank argues his conviction for felony murder is against the manifest weight of the evidence because the State failed to disprove that he acted in self-defense. We disagree.

Applicable Law

{¶ 24} A review of the sufficiency of the evidence and a review of the manifest weight of the evidence are separate and legally distinct determinations. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997) While the test for sufficiency requires a determination of whether the State has met its burden of production at trial, a manifest weight challenges questions whether the State has met its burden of persuasion. *Id.* at 390.

{¶ 25} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259 (1991). "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979).

{¶ 26} A claim that the State failed to disprove self-defense is reviewed under the manifest-weight standard. *State v. Messenger*, 2022-Ohio-4562, ¶ 27; *State v. Smiley*, 2025-Ohio-

2666, ¶ 19 (5th Dist.). On review for manifest weight, a reviewing court is to examine 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 jury 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. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380 (1997). The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

Abduction

{¶ 27} Shank was convicted of four counts of abduction pursuant to R.C. 2905.02(A)(2). That section provides "[n]o person without privilege to do so, shall knowingly . . . [b]y force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear[.]"

{¶ 28} First, during her 911 call, Danielle stated Shank was pointing his gun at everyone in the bar. Transcript of trial (T.) at 224, 227.

{¶ 29} Michelle testified that after Shank shot Phil he yelled "your n-word is dead!" T. 261. Shank then would not let anyone leave the bar and because he was waving the gun around she did not feel she was at liberty to leave. T. 263, 265, 282-283. She stated she was frightened and tried to hide. T. 260, 287. Shank finally let her go after she said she was a widow and had children, but pointed the gun at her as she left. T. 264.

{¶ 30} Alyssa testified she also tried to hide after Shank shot Phil. After Shank let Michelle go Alyssa asked Shank if she could also leave and he said no. T. 311. She testified she was terrified and believed they were all going to die. Eventually Alyssa heard Shank say

"Oh, I'm not a murderer, I'm not going to hurt you guys." She therefore stood up and asked again if she could leave. Shank let Alyssa go, but held the gun on her as she left. T. 311.

{¶ 31} Brad testified he was more scared than he had ever been in his entire life. T. 342. He was still on the floor where he had fallen when he heard gunshots. When he looked up, Shank was pointing his gun at him. Shank asked if he wanted to get up and Brad said yes. Shank directed Brad to a barstool and told him to sit. He asked Brad if he wanted to die today and said he should kill him too. T. 341. Shank initially would not let anyone check on Phil and would not let anyone use their cell phones. When he eventually allowed Brad to check on Phil, Phil was deceased. T. 343. Asked on cross-examination why he felt he could not leave, Brad testified Shank said "Set down. Set the fuck down with a gun pointed at me. Am I supposed to do flips? I'm not going to try to leave when he's pointing a gun at me. He just shot a man." T. 368.

{¶ 32} Finally, Ryan testified Shank had his gun pointed at him and told him not to move. He therefore did not feel he could leave. T. 399. He believed Shank would shoot him because Shank asked if Phil was Ryan's friend and if so, he was going to kill Ryan too. Shank further told everyone he was going to kill them all and that he had already killed three people that day. T. 398. Even after Ryan talked Shank into letting everyone go, he still feared being shot in the back on the way out since Shank "had just shot a 76-year old man with no gun."

{¶ 33} Given the foregoing testimony, viewed in a light most favorable to the prosecution, we find a rational trier of fact could find that by brandishing a gun, holding his victims at gunpoint, and threatening to kill everyone, Shank restrained the liberty of Michelle, Alyssa, Brad, and Ryan. Thus, the jury could find the essential elements of abduction beyond a reasonable doubt.

Felony Murder

{¶ 34} Next, Shank was convicted of felony murder pursuant to R. C. 2903.02(B). That section provides "[no] person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code."

{¶ 35} At trial, Shank argued he acted in self-defense. R.C. 2901.05(B)(1) provides:

(B)(1) A person is allowed to act in self-defense, defense of another, or defense of that person's residence. 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, as the case may be.

{¶ 36} R.C. 2901.05(B)(1) therefore imposes two burdens. *State v. Davidson-Dixon*, 2021-Ohio-1485, ¶ 18 (8th Dist.). The defendant has the initial burden of production, which is the burden of producing evidence "that tends to support" that he used force in self-defense. *State v. Messenger*, 2022-Ohio-4562, ¶ 21. The burden then shifts to the State under its burden of persuasion to prove beyond a reasonable doubt that the defendant did not use force in self-

defense. *Id.* at ¶ 24. In other words, if the evidence tends to support that the defendant acted in self-defense, then the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. R.C. 2901.05(B)(1); *Id.* at ¶26; *State v. Gatewood*, 2021-Ohio-3325, ¶ 68. At trial, the State need only disprove one of the elements of self-defense beyond a reasonable doubt to sustain its burden. *State v. Jackson*, 22 Ohio St.3d 281, 284 (1986). Accord, *State v. Carney*, 2020-Ohio-2691, ¶31 (10th Dist.); *State v. Staats*, 2021-Ohio-1325, ¶ 28 (5th Dist.)

{¶ 37} Because Shank asserted the affirmative defense of self-defense he did not seek to negate any of the elements of the offense of felony murder which the state was required to prove. Self-defense is not merely a denial or contradiction of evidence offered by the state to prove the essential elements of the charged crime. Rather, it is an admission of the prohibited conduct coupled with a claim that the surrounding facts or circumstances exempt the accused from liability and therefore "justification for admitted conduct." *State v. Poole*, 33 Ohio St.2d 18 (1973).

{¶ 38} In order to successfully counter Shank's self-defense claim, the State was required to disprove at least one of the following: (1) Shank was not at fault in creating the situation giving rise to the affray, (2) Shank had reasonable grounds to believe and an honest belief even if mistaken that he was in imminent danger of death or great bodily harm and that he did not use more force than necessary to defend against the attack and (3) Shank must not have violated any duty to retreat or avoid the danger. *State v. Robbins*, 58 Ohio St.2d 74, 79 (1979) (citations omitted); See also, *State v. Watson*, 2023-Ohio-3137, ¶84 (5th Dist.); *State v. Barker*, 2022-Ohio-3756 (2nd Dist.), ¶27; *State v. Evans*, 2002-Ohio-2610 (8th Dist.), ¶ 53; *State v. Hamilton*, 2002-Ohio-3862 (12th Dist.), ¶17. While Shank had no duty to retreat pursuant

to Ohio's "stand your ground" law, the State produced sufficient evidence to disprove the remaining two elements.

{¶ 39} Shank argues he did not start the affray and believed he was in imminent danger of serious bodily harm or death.

{¶ 40} First, testimony from the witnesses, security video from the bar, and a recorded phone call from Shank himself indicate that Shank was at fault for creating the situation giving rise to the affray. Shank appeared to be looking for a fight. As discussed above, Shank first tried to pick a fight with John over a pool game, then attempted to engage Ryan in an argument, and finally, started an argument with Michelle. Shank slapped Michelle's hand when she told him to get away from her and punched her in the face. These actions led to other patrons attempting to separate them. The bar security video corroborates the testimony of each witness. State's exhibit 4. Shank cannot provoke an assault or voluntarily enter a volatile situation and then claim he acted in self-defense. *State v. Walker*, 2021-Ohio-2037, ¶ 19 (8th Dist) citing *State v. Sekic*, 2011-Ohio-3978, at ¶ 15 (8th Dist.).

{¶ 41} Next, while Shank told the jury he feared for his life, 26-year-old Shank also bragged to Detective Johnson about being a wrestler his entire life. T. 523. Ryan testified that while 76-year-old Phil did throw a couple punches, contrary to Shank's claim at trial, he did not see Phil punch Shank in the head and he could see ". . .nothing [Phil] was doing was harming [Shank] or putting his life in danger." T. 396. Indeed, Shank was not injured yet he responded to what amounted to a scuffle with deadly force. Thus, the jury could reasonably conclude that Shank did not have a reasonable belief, even if mistaken, that he was in any danger of great bodily harm or death, and that he responded with more force than was necessary to repel the attack.

{¶ 42} Upon review of the entire record, we find this is not an exceptional case in which the evidence weighs heavily against a conviction, and the jury did not lose its way in rejecting Shank's self-defense claim and finding him guilty of murder.

{¶ 43} The first and second assignments of error are overruled.

III

{¶ 44} In his third assignment of error, Shank argues he was denied effective assistance of counsel when his trial counsel failed to request a jury instruction for the lesser included offense of involuntary manslaughter for the indicted offense of felony murder, and aggravated assault for the indicted offense of felonious assault. Shank further faults his counsel for failing to object to improper character evidence of Phil's peaceful reputation.

Applicable Law

{¶ 45} To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate: (1) deficient performance by counsel, i.e., that counsel's performance fell below an objective standard of reasonable representation, and (2) that counsel's errors prejudiced the defendant, i.e., a reasonable probability that but for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984); *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraphs two and three of the syllabus. "Reasonable probability" is "probability sufficient to undermine confidence in the outcome." *Strickland* at 694.

{¶ 46} Because there are countless ways to provide effective assistance in any given case, judicial scrutiny of a lawyer's performance must be highly deferential. *Strickland*, 466 U.S. 668 at 694. "Decisions on strategy and trial tactics are granted wide latitude of professional judgment, and it is not the duty of a reviewing court to analyze trial counsel's

legal tactics and maneuvers." *State v. Quinones*, 2014-Ohio-5544, ¶ 18 (8th Dist.). Even debatable trial tactics and strategies do not constitute ineffective assistance of counsel. *State v. Clayton*, 62 Ohio St.2d 45 (1980). "Counsel's decision not to request a jury instruction falls within the ambit of trial strategy." *State v. Conway*, 2006-Ohio-2815, ¶ 111.

Failure to Request Jury Instructions

{¶ 47} Tactical or strategic trial decisions, even if unsuccessful, do not generally constitute ineffective assistance. *State v. Carter*, 72 Ohio St.3d 545, 558 (1995). It is well settled that the failure to request instructions on lesser-included offenses is a matter of trial strategy and does not establish ineffective assistance of counsel. *State v. Clayton*, 62 Ohio St.2d 45 (1980); *State v. Griffie*, 74 Ohio St.3d 332, 333 (1996).

{¶ 48} Moreover, this court has previously found aggravated assault, as defined by R.C. 2903.12(A)(2), is not a lesser included offense of felonious assault. *State v. Fleming*, 1998 Ohio App. LEXIS 3085, 1998 WL 346689, *5 (5th Dist.), appeal not allowed, 83 Ohio St.3d 1447, 700 N.E.2d 331 (1998), citing *State v. Deem*, 40 Ohio St.3d 205, 210 (1988). Rather, aggravated assault is an inferior degree of felonious assault because the elements of aggravated assault are identical to those of felonious assault, with the exception of the additional mitigating element of serious provocation. *Id.*, citing *State v. Mack*, 82 Ohio St.3d 198, 200 (1998).

{¶ 49} In order to be serious, provocation "must be reasonably sufficient to bring on extreme stress and the provocation must be reasonably sufficient to incite or to arouse the defendant into using deadly force. In determining whether the provocation was reasonably sufficient to incite the defendant into using deadly force, the court must consider the emotional and mental state of the defendant and the conditions and circumstances that

surrounded him at the time." *Deem*, paragraph five of the syllabus. Provocation must be occasioned by the victim and must be "sufficient to arouse the passions of an ordinary person beyond the power of his or her control." *State v. Shane*, 63 Ohio St.3d 630, 635 (1992).

{¶ 50} As discussed in the first two assignments of error, the evidence produced by the State supported a conclusion that Shank was the instigator, not the victim. Moreover, Shank never argued provocation. Shank cannot therefore establish ineffective assistance when counsel failed to request an unwarranted jury instruction.

Character of the Victim

{¶ 51} Evid.R. 404(A)(2) states:

Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

{¶ 52} The character of the victim was admissible in this matter because Shank proceeded on the affirmative defense of self-defense. Shank's opening statement painted a picture of Phil: "relentless and unyielding, unleashed a barrage of fists, blow after blow as [Shank] lay helpless" and Shank as "terrified, panicked and desperate." T. 204. Evid.R. 405(A) states that: "In all cases in which evidence of a character or trait of character of a person is

admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion." Testimony of Phil's character did not therefore warrant an objection from Shank's counsel.

{¶ 53} Because Shank has failed to meet the requirements set forth in *Strickland*, the third assignment of error is overruled.

IV

{¶ 54} In his final assignment of error, Shank argues the trial court committed plain error when it failed to instruct the jury on the lesser included offense of involuntary manslaughter and the inferior degree of aggravated assault. We disagree.

{¶ 55} Shank never requested the involuntary manslaughter instruction he now contends should have been given by the trial court. Accordingly, our review of the alleged error must proceed under the plain error rule of Crim. R. 52(B). *State v. Dorsey*, 2015-Ohio-4659, ¶ 64 (5th Dist.).

{¶ 56} An error not raised in the trial court must be plain error for an appellate court to reverse. *State v. Long*, 53 Ohio St.2d 91 (1978) at paragraph one of the syllabus; Crim.R. 52(B). In order to prevail under a plain error analysis, appellant bears the burden of demonstrating that the outcome of the trial clearly would have been different but for the error. *Id.* at paragraph two of the syllabus. Notice of plain error "is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *Id.* at paragraph three of the syllabus.

{¶ 57} As discussed under the third assignment of error, Shank was not entitled to the jury instruction he now argues was appropriate. We therefore find no error, plain or otherwise.

{¶ 58} The final assignment of error is overruled.

{¶ 59} The judgment of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

By: King, P. J.

Baldwin, J. and

Gormley, J. concur.