[Cite as *State v. Franklin*, 2026-Ohio-4321.]

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

STATE OF OHIO Plaintiff - Appellee -vs- SHAWN ANTHONY FRANKLIN Defendant - Appellant	Case No. 2025-CA-00162 Opinion and Judgment Entry Appeal from the Court of Common Pleas, Case No. 2025-CR-1138 Judgment: Affirmed Date of Judgment Entry: October 30, 2026

BEFORE: Andrew J. King; William B. Hoffman; David M. Gormley, Judges

APPEARANCES: KYLE L. STONE, CHRISTOPHER A. PIEKARSKI, for Plaintiff-Appellee; BERNARD HUNT, for Defendant-Appellant.

King, P.J.

{¶ 1} Defendant-Appellant Shawn Anthony Franklin appeals the October 30, 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 16, 2025, shortly after midnight, Stark County Sheriff's Deputy Joshua Stansberry responded to a 911 report of a man grabbing, punching, kicking, and throwing a woman around on Waynesburg Drive SE. The caller also indicated the woman was naked from the waist up.

{¶ 3} Upon arrival to the reported area, Stansberry located M.M. who was tearful and in the same condition reported by the 911 caller. He provided M.M. with a blanket and

proceeded to get a statement from her. She explained she and Franklin had argued as they drove through the area and that she just wanted to get away from him. She therefore got out of the car and tried to walk away, but Franklin also got out of the car and followed M.M. He punched and smacked M.M. and tore off her shirt. M.M. also stated Franklin strangled her. M.M. had visible injuries which Deputy Cory Marshall photographed. The injuries included scrapes along her left collarbone and shoulder, red marks and discoloration along her right bicep and shoulder, redness and marks around her neck, scrapes on her back and hands, and a small, bloody laceration on her mouth. M.M. stated she wanted to pursue charges because she was tired of this happening all the time, yet she did not want Franklin to go to jail.

{¶ 4} M.M. initially gave two different addresses for herself and Franklin. But when Stansberry mentioned to Deputy Marshall that the offense would be an assault rather than a domestic violence, M.M. corrected Stansberry and stated it was domestic violence. She explained she and Franklin had lived together at Franklin's mother's home for the past four to eight months. She further stated Franklin's mother had kicked him out a few days prior and the two had therefore stayed at the Top of the Mark motel for the preceding two days. When deputies attempted to locate Franklin at his mother's home that morning, Franklin's sister stated he no longer lived there. M.M. had a public housing residence where she and her four children, aged 20, 19, 17, and 16 had stayed for 13 years.

{¶ 5} On July 8, 2025, the Stark County Grand Jury returned an indictment charging Franklin with one count of domestic violence, a felony of the third degree, and one count of strangulation, a felony of the fourth degree.

{¶ 6} Franklin entered pleas of not guilty and elected to proceed to a jury trial which began on October 21, 2025. The State elicited the above outlined facts through the testimony

of M.M., Deputy Stansberry, and Deputy Marshall. Franklin rested without presenting evidence. Franklin requested and received a jury instruction on assault as a lesser included offense of domestic violence.

{¶ 7} After hearing the evidence and deliberating, the jury found Franklin guilty of domestic violence, but acquitted him of strangulation. Franklin was subsequently sentenced to a prison term of 36 months.

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

I

{¶ 9} "APPELLANT'S RIGHTS TO A FAIR TRIAL AND TO DUE PROCESS WERE VIOLATED WHEN THE TRIAL COURT MISSTATED THE LAW REGARDING COHABITATION THEREBY MISLEADING THE JURY."

II

{¶ 10} "THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO PROVIDE THE JURY WITH A FINAL JURY INSTRUCTION THAT APPELLANT'S PRIOR CONVICTIONS FOR DOMESTIC VIOLENCE COULD BE USED SOLELY FOR THE PURPOSE OF ENHANCING HIS CURRENT CHARGE AND NOT AS CORROBORATING EVIDENCE OF HIS GUILT ON THE OTHER CHARGES."

III

{¶ 11} "APPELLANT WAS DENIED HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS BECAUSE THE PROSECUTION MISTATED THE GOVERNING LAW

DURING CLOSING ARGUMENT AND COMMENTED ON THE VERACITY OF THE VICTIM."

IV

{¶ 12} "APPELLANT'S CONVICTION WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE."

V

{¶ 13} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

IV, V

{¶ 14} For ease of discussion, we will discuss Franklin's assignments of error out of order.

{¶ 15} Franklin's fourth and fifth assignments of error are interrelated and will therefore be addressed together. In these assignments of error, Franklin argues his conviction for domestic violence is against the manifest weight and sufficiency of the evidence. We disagree.

Standard of Review

{¶ 16} 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). 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.

Family or Household Member

{¶ 17} Franklin was convicted of one count of domestic violence pursuant to R.C. 2919.25 which states "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." Franklin does not dispute that he caused physical harm to M.M. Rather, he argues M.M. was not a family or household member as defined by R.C. 2919.25(F)(1) and (2).

{¶ 18} "Family or household member" is defined in relevant part as "[a] spouse, a person living as a spouse, or a former spouse of the offender. . . " R.C. 2919.25(F)(1)(a)(i). A "person living as a spouse" includes "a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question." R.C. 2919.25(F)(2).

{¶ 19} Franklin argues that because the State failed to present evidence showing he lived with M.M. in a common-law marital relationship, it was required to prove he and M.M. cohabitated and failed to do so.

{¶ 20} In *State v. Williams*, the Ohio Supreme Court identified the essential elements of cohabitation as "(1) sharing of familial or financial responsibilities and (2) consortium."

Williams, 79 Ohio St.3d 459, 465 (1997). The Court went on to hold that "the offense of domestic violence, as expressed in R.C. 2919.25(E)(1)(a) and related statutes, arises out of the relationship of the parties rather than their exact living circumstances." *Id*. 463-464. The Court noted:

> Possible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets. Factors that might establish consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations. These factors are unique to each case and how much weight, if any, to give to each of these factors must be decided on a case-by-case basis by the trier of fact.

{¶ 21} The *Williams* Court recognized wide ranging definitions of cohabitant and family or household member. In doing so, the Court cited numerous examples including this court's decision in *State v. Shipman*, 1994 Ohio App. LEXIS 537 (5th Dist., 1994). In that matter, we found evidence that the parties had shared an apartment during the past year was sufficient to show cohabitation.

{¶ 22} Later, in *State v. McGlothan*, 2014-Ohio-85, the Ohio Supreme Court clarified its holding in *Williams* by finding the cohabitation elements announced in *Williams* are required only when the victim and the offender do not share the same residence. *Id*. at ¶ 13. The Court found that because McGlothan and the victim had lived with one another, the State "had no obligation to demonstrate the sharing of familial or financial responsibilities and consortium to prove cohabitation in this case." *Id*. ¶ 15.

{¶ 23} More recently, in *State v. Branch*, 2026-Ohio-664 (5th Dist.), this court found evidence that the couple was in a romantic relationship for a year and had lived together on and off for approximately six months in the same boarding-house room was sufficient to establish cohabitation.

{¶ 24} Franklin cites *State v. Taylor*, 2013-Ohio-4588 (5th Dist.), *State v. Cobb*, 2003-Ohio-3821, and *Grischow v. Grischow*, 2019-Ohio-1856 (5th Dist.) to support his argument that the state was required to prove shared household expenses or familial responsibilities in order to prove cohabitation. We note, however, that *Taylor* and *Cobb* both predate *McGlothan*, and *Grischow* is distinguishable as it involved a question of the continuation of spousal support, not an act of domestic violence.

{¶ 25} In the instant matter, the State presented evidence demonstrating M.M. and Franklin were in a serious, exclusive relationship that involved sexual relations. T. 123-125, 145, 148. M.M. initially reported she and Franklin had lived together at Franklin's mother's home for between four and eight months. T. 139, 155-158, 193-94, 205-206. M.M. further reported the couple had been staying at a motel since Franklin was kicked out of his mother's home two days prior. The jury additionally heard recordings of calls between M.M. and Franklin wherein they discuss their love for one another and their plans to remain together upon his release. T. 144-145, State's Exhibit 1.

{¶ 26} As Franklin notes, M.M. changed her story at trial and testified they never lived together. She testified they stayed together off and on, and that she would sometimes stay at his house. T. 145. M.M. also sent a letter to the trial court before trial stating she no longer wished to press charges and that essentially, Franklin had done nothing wrong. State's exhibit 2.

{¶ 27} Appellate counsel has not assigned as error the admission of M.M.'s statements to the deputies as hearsay, and trial counsel did not object to the admission of those statements. The statements therefore came in and were before the jury. The jury was free to consider them when it resolved the conflict between M.M.'s initial account (lived together at his mother's house for months; stayed at the motel) and her trial testimony (never lived together; stayed together off and on). We do not, therefore, in this appeal, analyze whether the statements were excited utterances or otherwise admissible. That is a question for an App.R. 26(B) application if one is filed. For purposes of the sufficiency and manifest weight arguments that were raised, the record the jury heard included both versions.

{¶ 28} The jury also heard M.M.'s testimony that she sometimes stayed at Franklin's house. That testimony, the relationship evidence, the motel stay, and the prior account the jury was permitted to consider are together sufficient under *McGlothan* and *Williams*. We are not therefore resting our affirmance on the out-of-court statements alone.

{¶ 29} That said, resolving conflicts in the evidence and assessing the credibility of a witness are matters committed to the trier of fact. The jury was free to believe all, part, or none of M.M.'s testimony. *State v. Petty*, 2017-Ohio-1062, ¶ 63 (10th Dist.). The jury heard the conflicting evidence and was required to resolve the competing versions of events. When the evidence permits competing reasonable interpretations, an appellate court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment. *State v. Reillo*, 2026-Ohio-2701, ¶ 28.

{¶ 30} Viewing the evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that Franklin and M.M. were cohabiting at the time of the offense and were therefore family or household members. Additionally, there is

no evidence in the record to indicate the jury lost its way in making its credibility determinations, resolving conflicts in evidence, and rejecting M.M.'s second version of events as a change of heart. Accordingly, the fourth and fifth assignments of error are overruled.

I

{¶ 31} In his first assignment of error, Franklin argues the trial court provided the jury with an erroneous jury instruction for cohabitation. We find Franklin invited this error.

{¶ 32} The trial court instructed the jury in part that "Cohabit means the sharing of family or financial responsibility ***or*** consortium. . . .[c]onsortium may include such things as mutual respect, fidelity, affection, society, cooperation, solace, aid to each other, friendship and sexual relations." T. 265-266, emphasis added. According to Franklin, the jury should have been instructed that cohabit means the sharing of family or financial responsibility ***and*** consortium. He argues the court's instruction allowed the jury to find cohabitation without finding the sharing of family or financial responsibility.

Standard of Review

{¶ 33} Generally, a trial court's jury instructions are reviewed for an abuse of discretion. *State v. Hall*, 2023-Ohio-837, ¶ 34 (10th Dist.), citing *State v. Dovangpraseuth*, 2006-Ohio-1533, ¶ 31 (10th Dist.). However, "[t]he question of whether a jury instruction is legally correct and factually warranted is subject to de novo review." *Cromer v. Child.'s Hosp. Med. Ctr. of Akron*, 2015-Ohio-229, ¶ 22. In this instance, however, not only did Franklin fail to object to the jury instruction he now challenges, he also agreed with the jury instructions proposed by the trial court.

{¶ 34} The invited error doctrine dictates that "a party is not entitled to take advantage of an error that he himself invited or induced." *State ex rel. Kline v. Carroll*, 2002-Ohio-4849, ¶

27. In regard to jury instructions and invited error, the Eleventh District Court of Appeals recently noted that invited error applies not only when an appellant provides erroneous jury instructions for the trial court's use, but "also applies where the appellant affirmatively approves of the instructions after the trial court seeks modifications or corrections to them." *State v. Willey*, 2026-Ohio-242, ¶ 37 (11th Dist.); see also *State v. Olsen*, 2023-Ohio-2254, ¶ 18 (11th Dist.); *State v. Chavez*, 2020-Ohio-426, ¶ 61 (3d Dist.) *State v. Petruccio*, 1999 Ohio App. LEXIS 6317, *9 (5th Dist.).

{¶ 35} Here, on the first day of trial the trial court and the parties engaged in discussion as to what should be included in the jury instructions. Transcript of Trial (T.) 172-181. The trial court directed the parties to look at the instructions overnight and advise the trial court the following day of any desired changes. T. 181. The next day, before printing the final version for the jury, the trial court asked counsel for Franklin if any additional corrections or modifications were needed. Counsel denied the same. T. 230.

{¶ 36} Because Franklin expressly approved the jury instructions given by the trial court, he cannot now take advantage of any error on appeal.

{¶ 37} Even if that were not true, however, any error would be harmless. As per our discussion above, if the jury found the couple was living together, it was not necessary, as Franklin argues, for the jury to also find the sharing of family or financial responsibilities. As the State points out, The Ohio Jury Instructions mirror *McGlothan* by defining cohabit as "living together at the same residence or if not living at the same residence, the sharing of family or financial responsibilities and consortium." Ohio Jury Instructions, CR § 519.25. Thus, while the trial court's jury instruction was incorrect, the outcome of the trial would not

have changed. The State conceded that M.M. and Franklin did not share family or financial responsibilities. Rather, it argued they lived together in a committed relationship. T. 286-287.

{¶ 38} The first assignment of error is overruled.

II

{¶ 39} In his second assignment of error, Franklin again challenges the trial court's jury instructions. Under this assignment of error, Franklin complains the trial court should have sua sponte provided the jury a "final instruction" as to how it could use Franklin's prior domestic violence convictions. We disagree.

{¶ 40} For the reasons set forth in the preceding assignment of error, Franklin's complaint in this assignment of error also raises implications of the invited error doctrine as Franklin did not raise the issue of a "final instruction" in the trial court, did not object to the trial court's failure to provide an additional limiting instruction, and approved the final version of the jury instructions. However, even when reviewed for plain error, Franklin's complaint fails.

{¶ 41} 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, an appellant bears the burden of demonstrating that the outcome of the trial clearly would have been different but for the error. *Long,* 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.

{¶ 42} Upon review of the record, we find no plain error. We first note that during jury selection, the trial court instructed the venire at the outset as to how it could use Franklin's

prior convictions. T. 33. Five potential jurors were excused for cause when they indicated they could not be fair and impartial given Franklin's prior convictions. T. 34-38, 89.

{¶ 43} Next, counsel for Franklin may have reasonably made a tactical decision to abstain from requesting a limiting instruction on Franklin's prior convictions in order to draw less attention to those convictions. *State v. Essinger*, 2003-Ohio-6000, ¶ 34 (3d Dist.), citing *State v. Pitts*, 2002-Ohio-6291, ¶ 85 (9th Dist.).

{¶ 44} Third, the State produced plentiful evidence to support Franklin's conviction for domestic violence. Deputy Stansberry found M.M. crying and topless in the same area reported by the 911 caller. M.M. had visible injuries and explained she and Franklin had lived together at Franklin's mother's home for an extended period of time before Franklin was kicked out a couple days prior. M.M. indicated the two had therefore been staying at a motel for the preceding two days. T. 155-158, 194, 201, 205-206, 244-246.

{¶ 45} Finally, the jury demonstrated its ability to follow the instructions of the trial court and to fairly and impartially consider and weigh the evidence when it acquitted Franklin of the strangulation charge.

{¶ 46} Given the foregoing, Franklin has failed to establish the outcome of his trial clearly would have been different but for the failure of the trial court to provide a second limiting instruction. Having found no error, plain or otherwise, the second assignment of error is overruled.

III

{¶ 47} In his third assignment of error, Franklin argues the State committed prosecutorial misconduct by misstating the law and improperly commenting on the victim's veracity during closing argument. We disagree.

Standard of Review

{¶ 48} The test for prosecutorial misconduct is whether the prosecutor's comments and remarks were improper and if so, whether those comments and remarks prejudicially affected the substantial rights of the accused. *Sunbury v. Sullivan*, 2012-Ohio-3699, ¶ 30 (5th Dist.) citing *State v. Lott*, 51 Ohio St.3d 160 (1990).

{¶ 49} In reviewing allegations of prosecutorial misconduct, it is our duty to consider the complained of conduct in the context of the entire trial. *Darden v. Wainwright*, 477 U.S. 168 (1986). A trial is not unfair, if, in the context of the entire trial, it appears clear beyond a reasonable doubt the jury would have found the defendant guilty even without the improper comments. *State v. Treesh*, 90 Ohio St.3d 460, 464 (2001).

{¶ 50} Franklin argues the State misstated the law and improperly commented on M.M.'s credibility in its closing argument. He points to two statements, however, he objected to neither. This assignment of error is therefore also reviewed for plain error.

{¶ 51} Franklin first argues the State provided an incorrect definition of cohabitation by repeating the trial court's instruction and stating cohabit "means the sharing of family or financial responsibilities or consortium." T. 287. According to Franklin, the correct definition of cohabitation is as announced in *Williams*; "the sharing of family or financial responsibilities and consortium." Brief of Appellant at 21, *Williams*, supra at 465. As discussed in our treatment of the first, fourth and fifth assignments of error however, pursuant to the Supreme Court of Ohio's decision in *McGlothan*, supra, the *Williams* factors are required only when the parties do not share a residence. *McGlothan* at ¶ 13. The State argued that M.M. and Franklin had lived at Franklin's mother's home for at least four months before Franklin's arrest. T. 286. The State's comment was not, therefore, improper.

{¶ 52} Next, Franklin argues the State improperly commented on M.M.'s veracity. Franklin specifically points to two statements. He first faults the State's comment that M.M. "tried to minimize it, I think saying maybe it was an accident." T. 283. At that point in the State's closing, the State was discussing whether Franklin knowingly caused physical harm to M.M. However, Franklin conceded that he knowingly caused physical harm to M.M. Franklin's defense was instead that M.M. was not a family or household member. T. 292. We therefore find no error.

{¶ 53} Finally, Franklin points to a second mention by the State as to its belief that M.M.'s testimony minimized the true nature of events specifically, "Now, I think she minimized it when she said, Well, he was trying to get me back in the car and you know, he was grabbing my shirt and maybe, you know, not intentionally trying to strangle me or choke me . . ." T. 290. Here the State was discussing the elements of strangulation. We note the jury acquitted Franklin of strangulation. Franklin has therefore failed to establish any prejudice as a result of this statement.

{¶ 54} Having found no plain error, the third and final assignment of error is overruled.

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

By: King, P. J.

Hoffman, J. and

Gormley, J. concur.