

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

|                      |   |            |
|----------------------|---|------------|
| STATE OF OHIO,       | : |            |
|                      | : |            |
| Plaintiff- Appellee, | : |            |
|                      | : | No. 115858 |
| v.                   | : |            |
|                      | : |            |
| BIONCA ELLIS,        | : |            |
|                      | : |            |
| Defendant-Appellant. | : |            |

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 8, 2026**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-24-692604-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda, Anna Faraglia, and Jillian Piteo, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Erika B. Cunliffe and Francis Cavallo, Assistant Public Defenders, *for appellant*.

MICHELLE J. SHEEHAN, A.J.:

{¶ 1} Defendant-appellant Bionca Ellis (“Ellis”) appeals from the judgment convicting her of aggravated murder, murder, attempted murder, felonious assault, endangering children, and aggravated theft. Ellis alleges 1) the jury was provided the wrong legal standard for insanity by the State’s expert; 2) the prosecutor improperly informed the jury that a guilty verdict was the only way to hold Ellis accountable for what she had done; and 3) she received ineffective assistance of counsel during the trial.

{¶ 2} After a thorough review of the record and applicable law, we overrule each assignment of error and affirm her convictions.

## **I. Background Overview**

### **A. Relevant facts**

{¶ 3} On May 29, 2024, Ellis was arrested for shoplifting at a Walmart located in the city of North Olmsted. She was taken to the North Olmsted Police Department jail and released two days later.

{¶ 4} On June 3, 2024, she returned to the North Olmsted Police Department, inquiring about some money that had been taken from her when she had been arrested. The officer on duty advised Ellis that all her property had been returned to her when she was released. Ellis became angry and told the officer that she needed that money because she had no place to stay. As Ellis left the lobby of

the North Olmsted Police Department, she looked back at the officer, turned off the light for the lobby, and walked out.

{¶ 5} Ellis went to Volunteers of America (“VOA”), a thrift store located in North Olmsted. While at VOA, Ellis took two knives and exited the store without paying for them.

{¶ 6} A short time later, Ellis walked to the North Olmsted Giant Eagle, dropping one of the knives she had taken along the way. Surveillance video presented at trial captured Ellis walking into Giant Eagle, carrying the knife in her hand. While in the store Ellis observed M.W. and her three-year-old son, J.W. M.W. and J.W. exited the store, and Ellis followed directly behind them.

{¶ 7} A customer in the parking lot observed M.W. and J.W. exiting the Giant Eagle. J.W. was sitting in the child seat area of the shopping cart. When M.W. opened the back hatch of her vehicle, the customer observed Ellis coming around the corner, raise her arm while holding a knife, and began stabbing J.W. and M.W. multiple times. The shopping cart fell to the ground, and the customer observed M.W. cradling J.W. in her arms. Ellis stood there for a moment and then “just walked off.”

{¶ 8} Officer Oliver Wolcott (“Officer Wolcott”) of the North Olmsted Police Department was on duty that day when he received a call that there had been a stabbing at Giant Eagle. When he arrived on scene, he received information that the suspect was a black female wearing all black, exiting towards Dover Center Road. Officer Wolcott headed in that direction where he eventually located Ellis.

Officer Wolcott observed the knife still in her hand and exited his vehicle with his gun drawn. Ellis tossed the knife off to the side. Officer Wolcott ordered Ellis to get onto her stomach. Ellis complied and was eventually taken into custody.

{¶ 9} J.W. was pronounced dead later that day as a result of his wounds.

## **B. Indictment**

{¶ 10} On June 5, 2024, the Cuyahoga County Grand Jury returned an indictment, charging Ellis with the following offenses:

1. Aggravated murder, an unclassified felony, in violation of R.C. 2903.01(A), for causing the death of J.W.
2. Murder, an unclassified felony, in violation of R.C. 2903.02(A), for causing the death of J.W.
3. Murder, an unclassified felony, in violation of R.C. 2903.02(B), for causing the death of J.W.
4. Felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(1), for causing serious physical harm to J.W.
5. Endangering children, a felony of the second degree, in violation of R.C. 2919.22(B)(2).
6. Attempted murder, a felony of the first degree, in violation of R.C. 2923.02/2903.02(A), for attempting to cause the death of M.W.
7. Attempted murder, a felony of the first degree, in violation of R.C. 2923.02/2903.02(B), for attempting to cause the death of M.W.
8. Felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(1), for causing serious physical harm to M.W.
9. Tampering with evidence, a felony of the third degree, in violation of R.C. 2921.12(A)(1).
10. Theft, a misdemeanor of the first degree, in violation of R.C. 2913.02(A)(1).

### **C. Competency**

**{¶ 11}** On July 16, 2024, the trial court ordered Ellis be referred to the court psychiatric clinic for a competency evaluation, at the request of the State. On September 13, 2024, the parties stipulated to the court psychiatric report's finding that Ellis was incompetent to stand trial. The trial court ordered Ellis to inpatient treatment at Northcoast Behavioral Health ("Northcoast") for competency restoration.

**{¶ 12}** On February 11, 2025, the parties each stipulated to a report from Northcoast indicating that Ellis's competency to stand trial had been restored.

### **D. Trial**

**{¶ 13}** Prior to trial, Ellis filed a motion to enter a plea of not guilty by reason of insanity. The only contested issue during the trial was whether Ellis was legally insane at the time she committed the offense.

**{¶ 14}** Each side presented experts who had interviewed Ellis and reviewed her personal and medical history, as well as the facts of the offense. Each expert authored a report concerning their findings and determinations as to whether Ellis was legally insane at the time of these offenses.

**{¶ 15}** Ellis presented Dr. Sara West ("Dr. West") as an expert witness in support of her insanity defense. Dr. West testified that at the time of the offense, Ellis was "suffering from symptoms associated with schizophrenia, a severe mental

illness.” And as a result, her mental illness caused her to not know that what she was doing was wrong.

**{¶ 16}** The State called Dr. Stephen Noffsinger (“Dr. Noffsinger”) as an expert witness who testified that at the time of the offense, Ellis was not legally insane. Dr. Noffsinger testified that the legal standard for insanity is very specific and set forth in the statute. He agreed that Ellis did suffer from schizophrenia but that it was his opinion

with reasonable medical certainty, however, that the defendant did not have a severe mental disease or defect at the time of the June 3, 2024, offense that caused her to not know the wrongfulness of the offenses. So despite having schizophrenia, it did not cause her to not know the wrongfulness of the offenses.

### **E. Verdict and Sentencing**

**{¶ 17}** After the presentation of the State’s case, Ellis moved the court to dismiss the charges pursuant to Crim.R. 29. The trial court granted Ellis’s motion with respect to Count 9, the tampering-with-evidence charge. Ellis’s motion was denied as to the remaining counts. Following deliberations, the jury returned a verdict finding Ellis guilty of the remaining counts set forth in the indictment.

**{¶ 18}** Sentencing was held on October 27, 2025. The trial court sentenced Ellis to an aggregate term of life in prison without the possibility of parole.

### **F. Appeal**

**{¶ 19}** Ellis appeals her convictions, presenting three assignments of error for our review:

1. The trial court committed plain error, denying Appellant her constitutional right to a fair trial, when the State's expert repeatedly misstated Ohio's legal standard for insanity, permitting the jury to deliberate under a materially false impression, in spite of the Court's instruction.
2. The trial court violated [Appellant's] right to due process under the United States Constitution and the Ohio Constitution's guarantee of due course of law by failing to issue a curative instruction informing the jury that a verdict of not guilty by reason of insanity results in court-supervised commitment, where the State's closing argument affirmatively framed the verdict as the only mechanism for imposing "accountability" for the charged offenses, creating a false and misleading framework for the jury's deliberations.
3. [Appellant's] rights under the Sixth and Fourteenth Amendments of the [United States] Constitution and Article I, Section 10 of the Ohio Constitution were violated because her trial counsel failed to provide her with effective representation.

## **II. Law and Analysis**

### **A. First Assigned Error for Review – Insanity Legal Standard**

{¶ 20} In her first assigned error for review, Ellis argues that her right to a fair trial was violated when the State's expert, Dr. Noffsinger, "repeatedly misstated Ohio's legal standard for insanity." After a thorough review of the record, we find that the State's expert evaluated Ellis under the proper legal standard for insanity.

#### **1. Standard of Review**

{¶ 21} Ellis did not object to Dr. Noffsinger's testimony concerning the proper legal standard for insanity in Ohio. As such, Ellis's failure to object forfeits all but plain error. *State v. Wilson*, 2026-Ohio-2814, ¶ 16 (8th Dist.), citing *State v. Nieves*, 2022-Ohio-3040, ¶ 28 (8th Dist.).

**{¶ 22}** Crim.R. 52(B) provides that plain errors are any “errors or defects affecting substantial rights [and] may be noticed although they were not brought to the attention of the court.” “Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Fluker*, 2026-Ohio-1278, ¶ 69 (8th Dist.), quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. “Thus, the party raising plain error must demonstrate ‘that there was an error, that the error was plain or obvious, that but for the error the outcome of the proceeding would have been otherwise, and that reversal must be necessary to correct a manifest miscarriage of justice.’” *Id.*, quoting *State v. Buttery*, 2020-Ohio-2998, ¶ 7, citing *State v. Quarterman*, 2014-Ohio-4034, ¶ 16.

## **2. Applicable Law**

**{¶ 23}** The legal standard for insanity is set forth at R.C. 2901.01(A)(14) which provides:

A person is “not guilty by reason of insanity” relative to a charge of an offense only if the person proves . . . that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.

**{¶ 24}** It has been well recognized that the “defendant’s sanity is not an element of the offense of aggravated murder.” *State v. Hancock*, 2006-Ohio-160, ¶ 35. Rather, the not guilty by reason of insanity defense is an affirmative defense, and “[t]he State is not required to prove the defendant’s sanity as an element of the offense.” *State v. Howard*, 2025-Ohio-273, ¶ 28 (8th Dist.), citing *Hancock* at ¶ 35.

Instead, “[t]he burden of proof, by a preponderance of the evidence, for an affirmative defense . . . is upon the accused.” R.C. 2901.05(A).

### **3. Analysis**

{¶ 25} Ellis alleges that Dr. Noffsinger “repeatedly suggested to the jury that a defendant’s mental illness must cause them to hold a mistaken belief that their conduct was ‘right’ or justified in order to be considered legally insane.” However, throughout his testimony, Dr. Noffsinger repeatedly recited the proper legal standard for insanity in Ohio. He summarized that standard to the jury, explaining that legal test for insanity is “at the time of the offense did the defendant have a severe mental disease or defect to cause them to not know the wrongfulness of the offenses.” He again summarized the legal standard later in his testimony as: “It’s did she have symptoms of a severe mental disease or defect at the time of the offense that caused her to not know the wrongfulness of the offense.”

{¶ 26} On multiple occasions, Dr. Noffsinger indicated that the dispositive question to determine whether Ellis met the insanity standard was whether Ellis understood the wrongfulness of her actions. A nonexhaustive list of examples of Dr. Noffsinger’s testimony includes his following statements:

[T]he records post offense are not going to give me important data on the sanity part other than to corroborate the presence or absence in general of a mental illness; but it’s not going to tell me specifically about the *wrongfulness* or about the defendant’s motive for the offense, but it — just in the first arm, the mental illness part.

...

So we have a motive that's unrelated to her severe mental disease. Therefore, she would not meet the second arm that the mental disease caused her to not know the *wrongfulness*. In fact, it's the exact opposite.

...

Because, again, the important second arm of the insanity standard is, did the mental disease or defect cause them to not know the *wrongfulness of the offense* at the time of the offense.

...

[T]his is the fourth reason why she didn't have a severe mental disease at the time of the offense which caused her to not know the *wrongfulness*. There is no psychotic motive which caused her to believe that the offenses were right.

...

Well, keep in mind the legal test for insanity is not psychosis. It's not disorganization. It's very specific. It's did she have symptoms of a severe mental disease or defect at the time of the offense that caused her to not know the *wrongfulness of the offense*.

...

Well, for all the reasons we have gone over, it's my opinion that at the time of the act Bionca Ellis had a severe mental disease of schizophrenia, but it did not cause her to not know the *wrongfulness of the offenses*.

...

[E]ven if you accept it at face value as accurate, it still doesn't indicate that the defendant didn't know the *wrongfulness* of the offense.

...

You can be mentally ill and still know the *wrongfulness of the offense*.

...

The test is at the time of the act, the specific time of the offense, that the person due to their severe mental disease did not know the *wrongfulness of the offense*.

So you have to have this impairment and knowledge of *wrongfulness of the offense* that's caused by the severe mental disease; and that's what is missing here.

...

[T]hat was one of the five or six points that all indicate she knew the *wrongfulness of her offense*. That she had a rational motive independent of her mental illness.

...

It's just that Ms. Ellis did not provide any psychotic motive for the offense either in discussing it with me, or in her contemporaneous behavior, no psychotic motive at all and certainly no psychotic motive which would have caused her to not know the *wrongfulness of the offense*.

...

Severe mental disease causing the defendant to not know the *wrongfulness of the act*.

...

I would say if she was having symptoms of her illness so severe as to cause her to not know the *wrongfulness of the offense*, I would expect her then to make statements to be consistent with not knowing the wrongfulness. Instead she just said nothing or she says, "So."

So nothing in there, the contemporaneous evidence, there was no outward statements that would indicate she did not know the *wrongfulness* due to mental illness.

...

Well, there's not objective evidence of it. But as you get into the interview later though — even if you accept what she tells me at face

value as accurate, it would still not cause her to not know the *wrongfulness of the offenses*.

...

I don't discount it; but again, it's not objectively corroborated. And secondly, even if it's true, it would not cause her to not know the *wrongfulness of committing this murder*.

...

We all agree that she has got schizophrenia and was off her medicine; but the issue here is, did she have symptoms to cause her to not know the *wrongfulness of the offense*.

...

Those symptoms are not corroborated by the contemporaneous evidence; but even if you throw that argument out the window and say, okay, she had these symptoms during the events, they would not cause her to not know the *wrongfulness of the offenses*.

...

Well, it means that she has schizophrenia, which gets her to the first arm on the test for insanity but does not get her to the second arm that she — that the symptoms caused her to not know the *wrongfulness of the offense*.

...

But even if you accept the reasons she provides at face value, in my opinion, they still don't indicate that due to mental disease or defect she did not know the *wrongfulness of the offenses*.

So I'm — I'm looking at it both ways. I'm looking at the objective evidence, and then I'm looking at her account, and there's a mismatch; but either way, both of them don't get you to not knowing the *wrongfulness of the offense* due to mental illness.

(Emphasis added.) These examples demonstrate that Dr. Noffsinger understood and testified correctly and consistently with respect to the legal standard for insanity in Ohio as set forth in R.C. 2901.05(A).

**{¶ 27}** Contrary to Ellis’s claims, Dr. Noffsinger did not testify that the *only* way a defendant could be considered legally insane is if their mental illness must have caused them to hold a mistaken belief that their conduct was right. Rather, he explained that in his experience people who meet the insanity standard generally believe that their actions are right. He explained:

[I]f we look at the legal test for insanity, it’s that the defendant, because of their severe mental disease or defect at the time of the offense did not know the wrongfulness of the offense.

So generally speaking, people who meet that test, their symptoms of their mental disease cause them to believe that the offense is right. And there’s generally only a couple of ways that that plays out at least in my experience in evaluating and treating insanity acquittees.

**{¶ 28}** Dr. Noffsinger went on to provide two common examples in how, in his experience, this often presents itself. In the first example, he stated “that some people have what’s called a paranoid self-defense. That due to their paranoid delusions, they believe that the victim is attacking them and going to kill them . . . they then strike out in a misperceived self-defense.” He explained that this is often the basis for a successful insanity defense “because if that were, in fact, true, then it would be legal to strike back in self-defense.”

**{¶ 29}** The second example he provided is that a person may commit an act they know is illegal but, based on a delusion, they believe that what they are doing is

morally right and “that there will be some greater good brought about for society because of them committing the offense.” He explained: “So for example, a defendant might think that based on their delusion that if they commit the offense it will bring about Armageddon and God will come in and rescue the world and all of mankind. That’s a common route to insanity.”

{¶ 30} Dr. Noffsinger correctly recited the legal standard for insanity multiple times throughout his testimony while providing common ways in which, based on his experience, legal insanity often presents itself. He did not testify that these were the exclusive ways in which insanity could present itself under the Ohio standard.

{¶ 31} Finally, to the extent that Ellis argues that the jury was misled by Dr. Noffsinger’s testimony, the trial court also instructed the jury as to the correct legal standard under Ohio law. The court provided:

To establish the defense of insanity, Ms. Ellis must prove by the greater weight of the evidence that at the time of the offense she did not know as a result of a severe mental disease or defect the wrongfulness of her act.

Now, a mental disease or defect is severe if it is serious, major or extremely intense.

And I will reiterate: A person is insane and not responsible for criminal conduct if at the time of her act or acts: A, she had a severe mental disease or defect; and B, as a result she did not know the wrongfulness of her act or acts.

Having provided the jury with the correct legal standard for insanity, “[w]e must presume that the jury followed the trial court’s proper instructions.” *Johnson v. U.S.*

*Title Agency, Inc.*, 2020-Ohio-4056, ¶ 63 (8th Dist.), citing *Torres v. Concrete Designs, Inc.*, 2019-Ohio-1342, ¶ 18 (8th Dist.); *State v. Smith*, 2023-Ohio-1296, ¶ 48 (8th Dist.).

{¶ 32} In summary, the State’s expert, Dr. Noffsinger, expressed the correct legal standard for insanity multiple times throughout his testimony. The trial court also instructed the jury with respect to what constitutes insanity under Ohio law. As such, we find no plain error with respect to Dr. Noffsinger’s testimony.

{¶ 33} Accordingly, Ellis’s first assignment of error is overruled.

## **B. Second Assigned Error for Review – State’s Closing Argument**

{¶ 34} In her second assignment of error, Ellis alleges that the trial court erred in failing to provide a curative instruction to the jury concerning statements the prosecutor made during closing argument urging the jury to hold Ellis accountable for her actions. Upon a thorough review of the record, we find that the court was not required to provide the jury with a curative instruction concerning the prosecutor’s comments.

### **1. Standard of Review**

{¶ 35} The record demonstrates that Ellis did not object to the prosecutor’s statements concerning accountability nor request the trial court issue a curative instruction to the jury. As such, we review Ellis’s arguments for plain error. *See State v. Freeman*, 2009-Ohio-5218, ¶ 23 (8th Dist.) (noting that “[w]hen defense counsel fails to request a curative instruction, any error in the trial court’s failure to give one is waived”). *See also State v. Lauderdale*, 2024-Ohio-481, ¶ 44 (2d Dist.),

citing *State v. Cunningham*, 2021-Ohio-416, ¶ 50 (4th Dist.) (recognizing that “the failure to request a curative instruction at trial forfeits all but plain error on appeal”).

## **2. Analysis**

{¶ 36} During its closing argument, the prosecutor argued that Ellis “knew what she was doing that June afternoon” and urged the jury to “[h]old her accountable for what she did to that child and his mother.” The prosecutor also told the jury that Ellis “is asking you folks to relieve her of her responsibility of accountability for the death of [J.W.] and the attempted murder of [M.W.]” and that their “decision in this case completes the accounting for the death of [J.W.] and the attempted murder of [M.W.]” Ellis claims that with these statements, the prosecution suggested to the jury that Ellis would be set free absent a guilty verdict. Ellis asserts that the court should have issued a curative instruction informing the jury that a verdict of not guilty by reason of insanity would result in court-supervised commitment, rather than release.

### **a. The Prosecutor’s Comments Were Not Improper**

{¶ 37} “It is not improper for a prosecutor to call on the jury to do its duty by convicting the defendant.” *State v. Myers*, 2018-Ohio-1903, ¶ 158. In doing so, the “prosecutor is at liberty to prosecute with earnestness and vigor, striking hard blows, but may not strike foul ones.” *State v. Smith*, 14 Ohio St.3d 13, 14 (1984), citing *Berger v. United States*, 295 U.S. 78, 88 (1935).

{¶ 38} With that said, “[a] prosecutor may not allude to matters that are not supported by admissible evidence.” *State v. Vanderhorst*, 2012-Ohio-2762, ¶ 46

(8th Dist.), citing *Smith* at 14. However, the prosecutor may “comment upon what the evidence has shown and upon the reasonable inferences from that evidence.” *Id.*, citing *State v. Lott*, 51 Ohio St.3d 160, 165 (1990). See also *Smith* at 14 (stating that “[i]t is a prosecutor’s duty in closing arguments to avoid efforts to obtain a conviction by going beyond the evidence which is before the jury”).

**{¶ 39}** We note that “[a]s a general rule, questions of punishment have no place in the trial of guilt or innocence.” *State v. Vanderhorst*, 2012-Ohio-2762, ¶ 46 (8th Dist.), citing *State v. Dossett*, 2006-Ohio-3367 (2d Dist.). The trial court emphasized this point to the jury, instructing them as follows:

[Y]ou have heard some discussion about punishment, and that may have come in in different ways. I don’t think any of the lawyers brought that up or any of witnesses who maybe had brought it up as well, in any way to diminish my responsibility. But you may not discuss or consider the subject of punishment at all.

It is only your duty to carefully weigh the evidence, decide all those disputed questions of fact that came through this witness chair, apply the instructions that each of you will have to your findings, and then render your verdict accordingly when you return the verdict forms.

The prosecutor never addressed sentencing or any potential punishments Ellis faced if she were to be found not guilty by reason of insanity.

**{¶ 40}** The prosecutor stated that Ellis committed these offenses “with prior calculation and design. She knew what she was doing that June afternoon. Hold her accountable for what she did to that child and his mother.” These comments were aimed at urging the jury to hold Ellis accountable for her actions. And prior to urging the jury to hold her accountable, the prosecutor stated that Ellis knew what

she was doing, a reference to the prosecution's contention that Ellis was not insane at the time of the offenses.

{¶ 41} This court addressed similar statements from the prosecution in *State v. Williams*, 2008-Ohio-1948 (8th Dist.). In *Williams*, during closing argument the prosecutor told the jury, "You've heard there is a war going on out there and you've heard that \* \* \* [The appellant] won a battle in that war. The bad guys won that day. Now it's time to hold him accountable for his actions." *Id.* at ¶ 51. In reviewing the comment, this court held that it "did not arise to the level of urging a conviction in order to protect community values but rather were aimed at having defendant be held accountable for his own actions. The remarks did not cause substantial prejudice." *Id.* at ¶ 53.

{¶ 42} In this case, contrary to Ellis's contentions, the prosecutor's comments did not urge the jury to find Ellis guilty or else she was set free. Rather, the prosecutor argued that at the time of the offenses, Ellis knew what she was doing and should be held accountable for her own actions. And like the *Williams* case, these remarks could not be said to have caused substantial prejudice.

**b. The Trial Court Was Not Required to Issue a Curative Instruction**

{¶ 43} Ellis argues that because of the prosecutor's statements, the trial court should have issued a "curative instruction informing the jury that a verdict of [not guilty by reason of insanity] does not result in release, but instead initiates mandatory judicial oversight and potential confinement."

{¶ 44} In support of her argument, Ellis directs us to the United States Supreme Court’s decision in *Shannon v. United States*, 512 U.S. 573 (1994). In *Shannon*, the Court recognized that under federal law an instruction concerning the consequence of a not guilty by reason of insanity verdict is not necessary “as a matter of general practice[.]” *Id.* at 587. However, the Court did note that under certain limited circumstances an instruction of some form may be necessary. The Court explained:

If, for example, a witness or prosecutor states in the presence of the jury that a particular defendant would “go free” if found [not guilty by reason of insanity], it may be necessary for the district court to intervene with an instruction to counter such a misstatement. The appropriate response, of course, will vary as is necessary to remedy the specific misstatement or error.

*Id.* In *Shannon*, the Court clarified that such an instruction in that case was not necessary because there was “no indication an improper statement was made in the presence of the jury during [the defendant’s trial.]” *Id.* at 588.

{¶ 45} As discussed above, the prosecutor did not tell the jury that a finding of not guilty by reason of insanity would permit Ellis to “go free.” Nor did the prosecution’s remarks mention any potential punishments Ellis may face. Furthermore, the trial court instructed the jury not to discuss or consider punishment during deliberations and we presume that the jury followed those instructions. *See Johnson*, 2020-Ohio-4056, at ¶ 63 (8th Dist.).

### **c. Enhanced Ohio Constitutional Protections**

**{¶ 46}** Finally, in support of her argument, Ellis reminds us that the Ohio Constitution “is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall.” *State v. Brown*, 2003-Ohio-3931, ¶ 21, quoting *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993), paragraph one of the syllabus. She thus urges us to find that Ohio’s Constitution “may afford greater procedural safeguards where necessary to preserve the fairness and integrity of the fact-finding process.”

**{¶ 47}** Ellis does not direct us to any authority in support of her contention that the Ohio Constitution affords greater procedural safeguards than the United States Constitution with respect to this issue. App.R. 16(A)(7) requires an appellant to include in their brief, “[a]n argument contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” As a result, “pursuant to App.R. 12(A)(2), ‘an appellate court may decline to address an assignment of error if an appellant fails to cite any legal authority to support his [or her] argument.’” *State v. Cook*, 2025-Ohio-2776, ¶ 15 (8th Dist.), quoting *Walsh v. Walsh*, 2023-Ohio-1675, ¶ 9 (8th Dist.), citing *Thornhill v. Thornhill*, 2009-Ohio-5569, ¶ 11 (8th Dist.).

**{¶ 48}** Here, Ellis fails to direct us to any legal authority in support of her contention that the Ohio Constitution would provide “greater procedural

safeguards” than the United States Constitution in this case. As such, we decline to address this argument.

{¶ 49} For the foregoing reasons, the trial prosecutor’s statements were not improper and the trial court did not commit plain error by failing to issue a curative instruction. Accordingly, Ellis’s second assignment of error is overruled.

### **C. Third Assigned Error for Review — Ineffective Assistance of Counsel**

{¶ 50} In her third assigned error for review, Ellis claims that she was denied effective assistance of counsel because her counsel failed to (1) object to Dr. Noffsinger’s testimony concerning the legal standard for insanity, (2) object to the prosecutor’s closing argument concerning the legal standard for insanity, (3) object to the prosecutor’s comments during closing argument about holding Ellis “accountable” for her actions, and (4) adequately question the jurors during voir dire about their familiarity and exposure to mental illness. After a thorough review of the record and applicable law, we find that Ellis was represented by constitutionally effective counsel at trial.

#### **1. Standard of Review**

{¶ 51} “In order to substantiate a claim for ineffective assistance of counsel, a defendant must satisfy a two-prong test.” *State v. Jefferson*, 2025-Ohio-2008, ¶ 14 (8th Dist.). “First, there must be a determination as to whether there has been a substantial violation of any of defense counsel’s essential duties to his [or her] client.” *State v. Bradley*, 42 Ohio St.3d 136, 141, (1989). To establish this first

prong, a defendant must show that “counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 142, quoting *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). “[B]ecause of the difficulties inherent in making [such an] evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Bradley* at 142, quoting *Strickland* at 689.

{¶ 52} “[Second], and analytically separate from the question of whether the defendant’s Sixth Amendment rights were violated, there must be a determination as to whether the defense was prejudiced by counsel’s ineffectiveness.” *Bradley* at 141-142. To establish that one has been “prejudiced by counsel’s deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel’s errors, the result of the trial would be different.” *Id.* at 143.

## **2. Analysis**

### **a. Failure to Object to the State’s Expert’s Testimony and the Prosecutor’s Closing Arguments**

{¶ 53} Ellis argues that her trial counsel was ineffective for failing to object to Dr. Noffsinger’s testimony concerning the legal standard for insanity and for failing to object to the prosecutor’s statements during closing arguments asking the jury to hold her accountable and responsible.

{¶ 54} With respect to these two claims, we have recognized that “where the failure to object does not constitute plain error, the issue cannot be reversed by

claiming ineffective assistance of counsel.” (Cleaned up.) *State v. Holmes*, 2026-Ohio-736, ¶ 69 (8th Dist.). *See also State v. Rogers*, 2015-Ohio-2459, ¶ 22 (holding that with respect to a plain error analysis, “[t]he accused is . . . required to demonstrate a reasonable probability that the error resulted in prejudice — the same deferential standard for reviewing ineffective assistance of counsel claims”), citing *United States v. Benitez*, 542 U.S. 74 (2004).

**{¶ 55}** Having already determined that no plain error occurred with respect to either Dr. Noffsinger’s recitation of the proper legal standard for insanity nor the prosecutor’s remarks urging the jury to hold Ellis accountable for her actions, Ellis’s trial counsel was not ineffective for failing to object.

**b. Failure to Object to the Prosecutor’s Remarks Concerning the Correct Legal Standard for Insanity**

**{¶ 56}** During closing argument, the prosecutor summarized Dr. Noffsinger’s testimony, remarking that Dr. Noffsinger “told us that in order to be successful on this affirmative defense, [Ellis has] *got to prove* that what she thought what she did was right, and she has not explained that in any way. There is no rational motive.” (Emphasis added.)

**{¶ 57}** This summary of Dr. Noffsinger’s testimony is incorrect. As discussed in the first assignment of error above, Dr. Noffsinger did not testify that the only way a person considered legally insane was if they thought their actions were right. Rather, Dr. Noffsinger explained that in his experience, defendants that are

successful in utilizing the insanity defense generally believe that their conduct is right.

**{¶ 58}** And while this statement may not have been correct, “[a] failure to object where an objection is available is not necessarily deficient performance. Exercising restraint during closing arguments is frequently a part of a trial strategy involving a desire to avoid interruption and to avoid drawing attention to certain statements.” *State v. Henderson*, 2019-Ohio-1760, ¶ 11 (7th Dist.), citing *State v. Mundt*, 2007-Ohio-4836, ¶ 90. “Debatable trial tactics generally do not constitute a deprivation of effective counsel.” *State v. Lang*, 2011-Ohio-4215, ¶ 192, citing *State v. Brown*, 38 Ohio St.3d 305, 317 (1988).

**{¶ 59}** As discussed above, Dr. Noffsinger testified multiple times with respect to the proper legal standard for insanity. The jury was also instructed by the court what the proper standard was. This occurred towards the end of the prosecutor’s closing argument, and it is reasonable that trial counsel chose to avoid interrupting the proceedings and drawing the jury’s attention to this statement when the jury had already been provided with the correct standard multiple times through testimony and jury instructions.

### **c. Voir Dire**

**{¶ 60}** Ellis also claims that her trial counsel was ineffective for failing to adequately question the jurors’ familiarity and exposure to mental illness.

**{¶ 61}** “Generally, jury selection falls within the realm of trial strategy and tactics.” *State v. Wallace*, 2017-Ohio-7322, ¶ 7 (8th Dist.), citing *Mundt*, 2007-

Ohio-4836, at ¶ 63. “Few decisions at trial are as subjective or prone to individual attorney strategy as juror voir dire, where decisions are often made on the basis of intangible factors.” *State v. Stone*, 2014-Ohio-4803, ¶ 31 (8th Dist.), quoting *Miller v. Francis*, 269 F.3d 609, 620 (6th Cir. 2001).

**{¶ 62}** The Ohio Supreme Court has noted that “[t]he selection of a jury is inevitably a call upon experience and intuition. The trial lawyer must draw upon his own insights and empathetic abilities. Written records give us only shadows for measuring the quality of such efforts.” *Mundt* at ¶ 64, quoting *Romero v. Lynaugh*, 884 F.2d 871, 878 (5th Cir. 1989). As such, the Court has recognized that “counsel is in the best position to determine whether any potential juror should be questioned and to what extent.” *Id.*, quoting *State v. Murphy*, 91 Ohio St.3d 516, 539 (2001).

**{¶ 63}** For these reasons, the Ohio Supreme Court has “consistently declined to ‘second-guess trial strategy decisions’ or impose ‘hindsight views about how current counsel might have voir dired the jury differently.’” *Mundt* at ¶ 63, quoting *State v. Mason*, 82 Ohio St.3d 144, 157 (1998).

**{¶ 64}** During voir dire, trial counsel discussed mental-health issues with several of the jurors on the panel. For example, the following discussion occurred:

[DEFENSE COUNSEL]: I’m going to spend most of my time — then I will come back to a couple more questions that I have, but most of my time talking about this not guilty by reason of insanity and mental health, okay.

The question was asked whether or not you all personally knew someone that was affected by mental health. Do you all recall that?

JURY PANEL: Yes.

[DEFENSE COUNSEL]: Okay. And I think you answered. I mean, and mental health is depression, bipolar, schizophrenia, PTSD. A number of you have known folks that go through that or you have had some of that experience yourselves; is that fair?

JURY PANEL: Yes.

[DEFENSE COUNSEL]: Okay. And what I want to know is how did the — these experiences affect you, your views on mental health.

{¶ 65} Defense counsel then questioned several jurors concerning their experiences with mental health and individuals in their lives that suffered from mental-health issues. Ellis claims that trial counsel’s questions were insufficient and trial counsel should have asked a more specific question such as, “Is there any scenario that you would be willing to consider a person’s mental illness [a]ffecting someone in a way that makes their actions not criminal?” But the questions asked and how defense counsel frames their questions falls squarely within the realm of trial strategy. *See Stone*, 2014-Ohio-4803, at ¶ 30 – 31 (8th Dist.). We therefore decline to second-guess trial counsel’s voir dire questions concerning mental health to the jury.

{¶ 66} For these reasons, we find that Ellis was not denied effective assistance of counsel at trial. Accordingly, Ellis’s third and final assignment of error is overruled.

### **III. Conclusion**

{¶ 67} Following a thorough review of the record and applicable law, we overrule Ellis’s three assigned errors for review. Her convictions are affirmed.

{¶ 68} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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MICHELLE J. SHEEHAN, ADMINISTRATIVE JUDGE

LISA B. FORBES, J., and  
MICHAEL JOHN RYAN, J., CONCUR