[Cite as *Strongsville v. Smith*, 2026-Ohio-4371.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF STRONGSVILLE,	:	
Plaintiff-Appellee,	:	No. 115942
v.	:	
MICHAEL THOMAS SMITH,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 5, 2026

Criminal Appeal from the Berea Municipal Court
Case No. 25CRB00213

Appearances:

Kenneth A. Kraus, City of Strongsville Law Director, and John T. Castele, Assistant Law Director/Prosecutor, *for appellee*.

Jonathan N. Garver, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} On November 12, 2025, a jury found defendant-appellant Michael Thomas Smith guilty of resisting arrest, a misdemeanor of the second degree in violation of R.C. 2921.33(A). The trial court entered judgment in accordance with

the jury's verdict and imposed a 90-day jail term and a fine of $750, with the fine suspended. Smith timely appealed. Finding no merit to the appeal, we affirm.

I. Procedural History and Jury Trial

{¶ 2} On February 18, 2025, the City of Strongsville ("Strongsville" or the "City") filed a one-count complaint alleging that Smith "did recklessly resist the lawful arrest of himself" in violation of R.C. 2921.33(A). The charge stemmed from Smith's arrest three days earlier by a Strongsville police officer at a Sheetz gas station. Smith entered a plea of not guilty. Following pretrial proceedings, the case proceeded to trial by jury on November 12, 2025.

{¶ 3} The City called one witness, Strongsville Police Department Sergeant Jason Miller, and introduced one exhibit, namely, Sergeant Miller's body-camera footage of his encounter with Smith. Sergeant Miller testified that he had been employed as a Strongsville police officer for close to 25 years. He further testified that on February 15, 2025, he was assigned to enforce traffic in a marked City patrol car and was in full uniform.

{¶ 4} Sergeant Miller testified that after an unrelated traffic stop, while waiting to merge with traffic and continue his patrol detail, he noticed a blue Hyundai with front-end damage and "what looked like a rug or a tarp hanging out the back of the trunk." (Tr. 102.) He explained that the City had dealt with "a lot of pursuits chasing Hyundai and Kia" vehicles. (Tr. 102.) He began to run the vehicle's plates "to check for stolen, all of that." (Tr. 103.) While doing so, he noticed the vehicle illegally roll through a red light as it turned right. (Tr. 103-104.)

{¶ 5} The plate check returned a report indicating that "the registered owner of that vehicle had a warrant for a traffic violation out of Parma." (Tr. 104.) Sergeant Miller followed the vehicle as it turned into the Sheetz gas station plaza. He did not immediately activate his lights, however, because he had not yet matched the vehicle's registered owner with the actual driver. Sergeant Miller explained that "just because the vehicle came back with a warrant on the tags, it doesn't necessarily mean it's the driver or the occupant," and in fact in his experience "that happens more often than not." (Tr. 105.)

{¶ 6} Sergeant Miller testified that he sought to verify the driver's identity against Ohio Bureau of Motor Vehicles records after the driver "had stopped at a gas pump and got out to start fueling the vehicle." (Tr. 105.) After comparing the driver with the computer image, he was "99 percent sure" it was the same person. (Tr. 105.) He identified Smith, in open court, as the driver of the blue Hyundai.

{¶ 7} Sergeant Miller activated the rear lights of his patrol car and exited his vehicle to speak with Smith. At this point, the direct examination began to alternate between Sergeant Miller's testimony and his body-camera footage. Sergeant Miller confirmed that he could be heard calling in the license plate number a second time for confirmation that the warrant was associated with this vehicle and for additional warrant details. He explained that "[t]he top of the warrant, that you usually see first when it gives their information," can provide certain "warnings . . . ahead of

time." (Tr. 109.) Sergeant Miller testified that "the very top of [Smith's] warrant said violent tendencies." (Tr. 109.)[1]

{¶ 8} Sergeant Miller testified that he intended to stall and wait for backup, but that Smith's demeanor went from dismissive to confrontational, raising "a lot of red flags that this is going to be an issue." (Tr. 109.) The body-camera footage depicts Sergeant Miller asking Smith for his identification. Smith responded by saying he "didn't do anything." Sergeant Miller repeated the request for identification and asked Smith why he was shaking, to which Smith responded, "Why don't you shut the fuck up, okay?" Sergeant Miller responded, "Excuse me?" Smith repeated: "I said, why don't you shut the fuck up?" Sergeant Miller explained to Smith that he was "showing a warrant," to which Smith responded: "I don't give a fuck."

{¶ 9} Sergeant Miller's testimony continued:

> He's standing at his vehicle that is running with the door open, putting his — when I said he has a warrant, you heard what he said. He doesn't give an F, and then places his left hand in his pocket, and is now bladed to me rather than preoccupied with the pumps.

(Tr. 109-110.)

{¶ 10} Sergeant Miller repeated that the warrant "did show violent tendencies" and told the jury that based upon his experience he believed it would be

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[1] While the charge of resisting arrest stems from Smith's actions after Sergeant Miller began to effectuate the arrest itself, this detailed chronology — especially Sergeant Miller's repeated references to "violent tendencies" — is necessary because it bears directly on Smith's claim that the City introduced improper character evidence. Smith's trial counsel did not object to Sergeant Miller's references to "violent tendencies."

better to interact with Smith at the gas station, while he was outside his vehicle, rather than possibly become involved in a "much more dangerous" pursuit on the road. (Tr. 110-111.) He testified:

> Initially, it seemed like just dismissive, like no big deal. He disagreed with me. But the moment he started those red flags, putting his hand in his pocket, swearing, becoming belligerent, that verified to me that the information on the warrant is probably correct, and he may become violent.

(Tr. 111.)

{¶ 11} Sergeant Miller's testimony then turned again to his narration of the video footage. He reiterated that Smith's verbal response to informing him that there was a warrant for his arrest "was that he did not give an F." (Tr. 111.) Sergeant Miller testified that when he then told Smith to place his hands behind his back,

> the first thing he did is put his hand — left hand in his pocket. Then rather than — You know, sometimes when we tell people they're under arrest, they may pause, they may want to hem and haw and have a discussion with you first. But he took a full step back over the hose indicating that he was moving towards his open door and running vehicle.
>
> At this time, there was no — there's zero chance I was going to allow him to get entry to that vehicle and either retrieve a weapon or try and drive away. And now we're in a fight and a pursuit through a parking lot full of people.

(Tr. 111-112.)[2]

{¶ 12} Sergeant Miller explained that he was concerned that Smith made "the conscious decision to step over the hose," which placed it between Smith and

[2] As discussed below, Sergeant Miller conceded on cross-examination that Smith already had his left hand in his pocket when he told him to place his hands behind his back.

Sergeant Miller, with Smith moving "towards an open door, a wide open door, with an engine running." (Tr. 112.) Sergeant Miller repeated again that he "was aware that [Smith] had violent tendencies as the caution showed." (Tr. 113.) He testified that he therefore had no intention of allowing Smith back into the Hyundai.

{¶ 13} Asked whether Smith turned around and put his hands behind his back when told to do so the first time, Sergeant Miller testified, "No, he did not." (Tr. 113.) He further testified that even after Smith was on the ground and was asked to put his hands behind his back, he did not do so, and that he ultimately had to put Smith's hands behind his back himself. (Tr. 113.) Sergeant Miller again explained that he felt a sense of urgency because Smith's "demeanor immediately verified that the violent tendencies alert was accurate." (Tr. 114.) Moreover, he explained to the jury that while it might be expected to "maybe step back . . . in shock that you're about to be arrested," Smith had taken "a step over that hose to get back towards his vehicle with his hand in the pocket." (Tr. 114.) Sergeant Miller testified, however, that Smith was compliant after his arrest. He also told the jury that a search of the vehicle revealed a can of bear spray on the front seat.

{¶ 14} On cross-examination, Sergeant Miller conceded, based upon viewing the body-camera footage again, that Smith had been holding his wallet in his left hand and actually placed it in his pocket when he was informed there was a warrant, i.e., prior to being told to place his hands behind his back. Sergeant Miller continued to maintain, however, that taking a "full step back over the [gas] hose" was indicative of "retreat." (Tr. 119.)

{¶ 15} Sergeant Miller further conceded that the encounter — at least from the time he told Smith to place his hands behind his back to the time the video concluded — lasted only a few seconds. He admitted that Smith did not use force at any time but insisted that because Smith did not comply with the command to turn around and put his hands behind his back and instead displayed "intent to retreat" by taking "that affirmative step over that hose," he was resisting the arrest in a "reckless" fashion. (Tr. 122 and 124.) He further testified that

> [p]rior to going fully to the ground, he was bracing himself with the car seat and the door, and I had to order him to let go of it so we could go to the ground easily. He was still holding on to that door trying to stand up against my weight.

(Tr. 124-125.)

{¶ 16} The City rested subject to the admission of its sole exhibit, the body-camera footage, which was admitted without objection. The defense made a Crim.R. 29 motion, later renewed. The Crim.R. 29 motions were denied. The defense called no witnesses and rested in the jury's presence.

{¶ 17} Prior to closing arguments, the trial court provided instructions to the jury. The complete written set of instructions is included in the appellate record, and we focus only on the instructions relevant to this appeal. The transcript reflects that consistent with the printed physical copy, the trial court instructed the jury:

> [T]he Defendant is charged with resisting arrest.
>
> Before you can find the Defendant guilty, you must find beyond a reasonable doubt that on or about the 15th day of February, 2025, and in Strongsville, Ohio, Cuyahoga County, the Defendant recklessly resisted with [sic] a lawful arrest of himself.

> Recklessly defined. A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature.
>
> A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.
>
> Resist defined. Resist means to oppose, obstruct, hinder, impede, interrupt, or prevent an arrest by a law enforcement officer recklessly by any means such as going limp or any other passive or indirect conduct.
>
> Arrest. Arrest means an intent to arrest under a real or pretended authority accompanied by the actual and/or constructive seizure or detention of the person, and which is so understood by the person arrested.
>
> The City must prove that the arrest was in the process of taking place when the resistance occurred. The City must also prove the Defendant understood that he was under arrest.

(Tr. 148-149.)

{¶ 18} The jury deliberated and returned a guilty verdict. The trial court subsequently sentenced Smith to 90 days in jail and a fine of $750. The fine was suspended in its entirety. This timely appeal followed.

II. Assignments of Error

{¶ 19} Smith raises six assignments of error for our review, which we present verbatim:

> I. The trial court deny Appellant a fair trial and committed plain error by admitting highly prejudicial character evidence describing Appellant as having "violent tendencies," where the evidence was not only irrelevant and inadmissible under Evid.R. 404(B), but where the city had failed to comply with the notice requirements of Evid.R. 404(B)(2). Fourteenth Amendment to

the Constitution of the United State; and Article I, Section 16, Constitution of the State of Ohio.

II. The trial court denied Appellant due process of the law, violated his first amendment right to free speech, and committed plain error by giving a jury instruction which defined the term resist — an essential element of the offense of resisting arrest — to include "opposition" to the arrest.

III. Appellant's conviction for resisting arrest violates the First Amendment to the Constitution of the United States and Article I, Section 11 of the Constitution of the State of Ohio.

IV. The evidence is insufficient, as a matter of law, to support Appellant's conviction for resisting arrest, in violation of R.C. 2921.33.

V. Appellant's conviction is against the manifest weight of the evidence.

VI. Appellant was denied the right to the effective assistance of counsel. Sixth and Fourteenth Amendments to the Constitution of the United states and Article I, Section 10, of the Constitution of the State of Ohio.

{¶ 20} We find no merit to any of Smith's assignments of error. Accordingly, we affirm.

III. Analysis

A. First Assignment of Error

{¶ 21} In his first assignment of error, Smith argues that the City violated Evid.R. 404(A) and (B) by introducing evidence of his character and by failing to provide him with written notice of its intent to use such evidence in advance of trial pursuant to Evid.R. 404(B)(2).[3]

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[3] Smith employs the term "due process" and cites U.S. Const., amend. XIV and Ohio Const., art. I, § 16. Aside from rote recitation of the constitutional provisions and the conclusory statement that the admission of character evidence deprived him of a fair trial,

{¶ 22} Smith lodged no objection to Sergeant Miller's repeated testimony that a cautionary notation on the warrant warned that he had "violent tendencies." "The failure to object to trial testimony forfeits all but plain error." *State v. Chapman*, 2019-Ohio-1452, ¶ 20 (8th Dist.), citing *State v. Rogers*, 2015-Ohio-2459, ¶ 23. Pursuant to Crim.R. 52(B), we may notice plain errors affecting substantial rights, even though those errors were not brought to the attention of the trial court.

{¶ 23} "To establish plain error, appellant must show 'that an error occurred, that the error was plain, and that the error affected his substantial rights — which [has been] interpreted to mean that the error affected the outcome of the trial.'" *State v. Parker*, 2026-Ohio-2178, ¶ 11 (8th Dist.), quoting *State v. Brinkman*, 2022-Ohio-2550, ¶ 45, citing *Rogers* at ¶ 22. However, "even if an accused shows that the trial court committed plain error affecting the outcome of the proceeding, an appellate court is not required to correct it." *Rogers* at ¶ 23. Instead, "[w]e take notice of plain error with the 'utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice.'" *State v. Nicholson*, 2022-Ohio-374, ¶ 37 (8th Dist.), quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. The party asserting plain error bears the burden of demonstrating it. *Nicholson* at ¶ 37. "This is an extremely high burden." *Chapman* at ¶ 20.

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however, he offers no cases or other authority discussing the application of these constitutional provisions in this context. For the reasons discussed more thoroughly in connection with Smith's second and third assignments of error, we disregard this aspect of his first assignment of error.

{¶ 24} While Smith makes passing reference to Evid.R. 404(A) in the argument section of his brief, his first assignment of error cites only Evid.R. 404(B), and the majority of his argument is focused on that subsection and its associated notice requirements. We find Smith's reference to Evid.R. 404(B) inapposite. That subsection of the rule provides:

> (B) Other crimes, wrongs, or acts.
>
> (1) Prohibited uses. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (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.

Evid.R. 404(B).

{¶ 25} Evid.R. 404(B) specifically addresses evidence of a discrete "other crime, wrong, or act." *Id.* The City, however, did not produce any "other acts" evidence. It did not identify any prior assault, threat, conviction, or other concrete act supporting the purported warning. Smith's argument that the City violated

Evid.R. 404(B)(2)'s advance-notice requirement is therefore unpersuasive. The City did not elicit, and Sergeant Miller did not offer, any "other act" evidence that would trigger the rule's advance-notice requirement.

{¶ 26} Insofar as Smith references Evid.R. 404(A), which relates to character evidence, that section is also inapplicable. Evid.R. 404(A) provides in pertinent part that "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion," subject to certain exceptions not relevant to this case. *See, e.g., State v. Sperk*, 2009-Ohio-1615, ¶ 21-28 (8th Dist.) (addressing testimony that defendant "had a bad temper" under Evid.R. 404(A) and separately considering "prior bad acts testimony" under Evid.R. 404(B)).

{¶ 27} Here, Sergeant Miller testified repeatedly that a cautionary note associated with the arrest warrant warned that Smith had "violent tendencies," and he further testified that Smith's behavior "verified . . . that the information on the warrant is probably correct, and he may become violent." (Tr. 111.) He did not testify, however, that Smith ever became violent during the arrest. It is apparent from the record that the unsolicited testimony was not in any way offered "for the purpose of proving action in conformity therewith on a particular occasion." Evid.R. 404(A). The warrant notation of violent tendencies could instead be relevant to Sergeant Miller's subjective apprehension of a possible confrontation and help explain his justification for acting quickly when he thought Smith was retreating rather than complying.

{¶ 28} Moreover, not only has Smith failed to demonstrate that an error occurred with the admission of the references to the warrant notation of violent tendencies, but he also has failed to show that the verdict would have been different. Independent of Sergeant Miller's testimony regarding the warning on the arrest warrant, the jury heard testimony that Smith was told to put his hands behind his back and that rather than comply he took a step backwards over a gas hose and towards the open door of his running automobile. It heard testimony that he braced himself against the vehicle and had to be ordered to release his grip. It heard testimony that when he was then ordered a second time to put his hands behind his back, he did not willingly do so, and that Sergeant Miller ultimately had to physically move Smith's hands behind his back. Moreover, the jury could independently evaluate Sergeant Miller's testimony by comparing it to the body-camera footage that captured the entire encounter.

{¶ 29} Despite Sergeant Miller's unsolicited interjections regarding the warning on the arrest warrant, the jury was not invited, through the jury instructions or otherwise, to make a leap from "violent tendencies" to resisting arrest. The other evidence, including the body-camera footage, supplied an independent basis for conviction. We cannot conclude that any error occurred in admitting the challenged testimony or that it affected the outcome of his trial. Nor can we find that this case presents exceptional circumstances warranting reversal to prevent a manifest miscarriage of justice.

{¶ 30} Smith's first assignment of error is overruled.

B. Second and Third Assignments of Error

{¶ 31} We address Smith's second and third assignments of error together. In his second assignment of error, he challenges the agreed-upon jury instructions, contending that the trial court denied him due process of the law, violated his First Amendment right to free speech, and committed plain error by giving a jury instruction which defined the term "resist" to include "opposition" to the arrest. In his third assignment of error, he contends that his conviction violated the First Amendment to the Constitution of the United States and Article I, Section 11 of the Constitution of the State of Ohio, again based on the use of the word "oppose" in the jury instructions.

{¶ 32} Smith's trial counsel did not object to the jury instructions. He has therefore waived all but plain error on appeal. *State v. Davis*, 2021-Ohio-2311, ¶ 29 (8th Dist.), citing *State v. Lott*, 51 Ohio St.3d 160 (1990), *State v. Burns*, 2011-Ohio-4230 (8th Dist.), Crim.R. 52(B), and Crim.R. 30(A). *See also State v. Hall*, 2025-Ohio-644, ¶ 11 (8th Dist.). "Even in the context of jury instructions, '[p]lain error "should be applied with utmost caution and should be invoked only to prevent a clear miscarriage of justice."'" *Cleveland v. White*, 2024-Ohio-1584, ¶ 17 (8th Dist.), quoting *State v. Skatzes*, 2004-Ohio-6391, ¶ 52, quoting *State v. Underwood*, 3 Ohio St.3d 12 (1983), syllabus. In a plain-error analysis, therefore, we review the jury instructions as a whole to determine whether a manifest injustice occurred as a result of any purported error in the instructions. *State v. Jones*, 2025-Ohio-2144, ¶ 42 (8th Dist.). "An improper or erroneous jury instruction does not constitute

plain error under Crim.R. 52(B) unless, but for the error, the outcome of the trial would clearly have been different." *Davis* at ¶ 30, citing *State v. Cooperrider*, 4 Ohio St.3d 226 (1983); *Jones* at ¶ 42. *See also White* at ¶ 17, citing *State v. Campbell*, 69 Ohio St.3d 38 (1994).

{¶ 33} Unlike his argument concerning character evidence, Smith's argument as to the jury instructions does not survive the first step of the plain-error analysis. The pertinent definition of "resist," both in the trial court's printed jury instructions and its narrative while giving the jury charge, corresponds to 3 *Ohio Jury Instructions*, CR § 521.33 (Rev. May 22, 2021), which defines "resist" as "to oppose, obstruct, hinder, impede, interrupt, or prevent an arrest by a law-enforcement officer by the use of force or recklessly by any means, such as going limp, or any other passive or indirect conduct."[4]

{¶ 34} According to Merriam-Webster's dictionary, one definition of "oppose" is "to offer resistance to," which suggests the jury instructions employ the word "oppose" as essentially synonymous with the word "resist" itself.[5] More importantly, Smith's focus on the single word "oppose" improperly isolates that word from the omitted terms that clarify the definition. As noted above, in our plain-error analysis we review the instructions as a whole. In this instance, "oppose" is part of a series of words — "oppose, obstruct, hinder, impede, interrupt, or prevent"

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[4] The trial court omitted the word "interfere" from the agreed jury instructions.

[5] https://www.merriam-webster.com/dictionary/oppose (accessed Oct. 5, 2026) [https://perma.cc/XPE2-VYRR].

— that are then followed by language requiring that the conduct be committed recklessly. Read as a whole, i.e., including the words that clarify the definition, the charge did not instruct jurors that mere verbal disagreement with an arrest is enough to support a conviction.

{¶ 35} There are two additional flaws with Smith's argument. First, while Smith is correct that form jury instructions are not binding substantive law, his contention that the word "oppose" was improperly included in the definition of "resist" is foreclosed by *State v. Pubill*, 2023-Ohio-3875 (8th Dist.). In that case, this court quoted the same jury instruction definition, including the word "oppose," as the applicable definition of resisting or interfering under R.C. 2921.33(A). The *Pubill* Court further recognized that resistance may be accomplished not only by force but also "'"recklessly by any means,"'" including "'"passive or indirect conduct."'" *Id.* at ¶ 37, quoting *State v. Carter*, 2022-Ohio-3901, ¶ 16 (1st Dist.), quoting 3 *Ohio Jury Instructions*, CR § 521.33 (Rev. May 22, 2021).

{¶ 36} Second, Smith's constitutional arguments regarding free speech and due process are underdeveloped. Smith does aver in his third assignment of error that by defining "resist" to include "oppose" the trial court invited the jury to find him guilty of resisting arrest "because of his statement that he 'didn't give a f**k'" about the outstanding arrest warrant, which was protected speech. (Appellant's brief at p. 17.) We acknowledge that Smith's profanity and disrespectful attitude were protected speech. "[T]he First Amendment protects a person from speaking rudely, offensively, and insultingly to a police officer." *Cleveland v. King*, 2025-

Ohio-3067, ¶ 1 (8th Dist.). Here, however, nothing suggests that the trial court's instructions, Sergeant Miller's testimony, or the City's arguments invited the jury to find that his foul language and defiant attitude prior to the initiation of the arrest independently constituted resisting arrest, disobeying a police order, or another crime turning on the contents of Smith's speech. Rather, the City used Smith's remark to comment on his mental state in relation to the specific jury instruction on recklessness. It argued that Smith's declaration that he did not care about the underlying warrant shed light on his mental state when he later stepped over the gas hose and away from Sergeant Miller, i.e., that his earlier remark suggested "heedless indifference" to the consequences of his actions. (Tr. 133.) This did not invite the jury to criminalize protected speech.

{¶ 37} Aside from that argument, the recitation of constitutional provisions, and the conclusory suggestion that use of the word "oppose" is overbroad, Smith cites no other authority and offers no principled argument suggesting a violation of his constitutional rights. "This court has held that when an appellant fails to cite to any legal authority for their claims, that failure allows this court to disregard their arguments." *Lewicki v. Grange Ins. Co.*, 2023-Ohio-4544, ¶ 41 (8th Dist.), citing *Pinkney v. Salett*, 2011-Ohio-4121, ¶ 3 (8th Dist.), citing App.R. 12(A)(2); App.R. 16(A)(7). "The appellant, rather than the appellate court, bears the burden to construct the necessary legal arguments that support the designated assignments of error." *Lewicki* at ¶ 41, citing *Doe v. Cuyahoga Cty. Community College*, 2022-Ohio-527, ¶ 26 (8th Dist.). *See also Siemientkowski v. State Farm Ins. Co.*, 2005-

Ohio-4295, ¶ 23 (8th Dist.) ("An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2) if an appellant fails to cite to any legal authority in support of an argument as required by App.R. 16(A)(7)."); *In re K.C.*, 2025-Ohio-5414, ¶ 22 (8th Dist.) (holding appellant did not demonstrate error where his brief made conclusory statements that the court erred but did not provide supportive legal arguments).

{¶ 38} Smith's second and third assignments of error are overruled.

C. Fourth Assignment of Error

{¶ 39} In his fourth assignment of error, Smith argues that the evidence was insufficient as a matter of law to support his conviction for resisting arrest. We find no merit to this assignment of error.

{¶ 40} "The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial." *State v. Wilborn,* 2024-Ohio-5003, ¶ 37 (8th Dist.), citing *State v. Cottingham*, 2020-Ohio-4220, ¶ 32 (8th Dist.). A sufficiency review "is not a factual determination, but a question of law." *State v. Jackson,* 2025-Ohio-109, ¶ 25 (8th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In reviewing a challenge based on sufficiency, we "must consider the evidence in the light most favorable to the [prosecution] and determine whether the evidence, if believed, would convince an average person that each element of the crime had been met." *State v. McClain*, 2026-Ohio-3934, ¶ 1. The inquiry is whether the prosecution has met its "burden of production" at trial. *State v. Dyer*, 2007-Ohio-1704, ¶ 24 (8th Dist.); *State v. Lynch*, 2025-Ohio-2769, ¶ 49 (8th Dist.).

{¶ 41} "'In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.'" *Cleveland v. Williams*, 2024-Ohio-3102, ¶ 10 (8th Dist.), quoting *Thompkins* at 386; *see also Cleveland v. Neal*, 2024-Ohio-1467, ¶ 26 (8th Dist.); *Lynch* at ¶ 49. Appellate courts are not to assess "whether the State's evidence *is to be believed*, but whether, *if believed*, the evidence against a defendant would support a conviction." (Emphasis added.) *Dyer* at ¶ 24; *Lynch* at ¶ 49. In considering the sufficiency of the evidence, we do not independently weigh the evidence. *Cleveland v. Wiggins*, 2025-Ohio-649, ¶ 37 (8th Dist.). "[A] sufficiency review is a question of the burden of production, not persuasion." *McClain* at ¶ 21.

{¶ 42} Prior to discussing the evidence, we briefly revisit the trial court's jury instructions. We have already addressed the trial court's jury instruction concerning the definition of "resist." The trial court further instructed the jury on the definition of recklessness, and Smith has not challenged the correctness of that component of the instruction. In that regard, "delaying an arrest by preventing the seizure or detention of a person may constitute resisting arrest because it constitutes reckless resistance." *State v. Hicks*, 2011-Ohio-2769, ¶ 19 (9th Dist.), citing *State v. Thomas*, 1995 Ohio App. LEXIS 397, *5 (9th Dist. Feb. 1, 1995). "By committing an act giving rise to the delay, a person may be proceeding with heedless indifference to the consequences and disregarding a known risk that his conduct will prevent arrest." *Hicks* at ¶ 19.

{¶ 43} Sergeant Miller testified that after he directed Smith to turn around and place his hands behind his back, Smith instead stepped away from him, which required Smith to step backwards and over a gas hose. That constituted affirmative conduct, inconsistent with Sergeant Miller's explicit directive, that hindered, impeded, and delayed (albeit briefly) the arrest. This alone was sufficient to demonstrate reckless resistance. In addition, after Sergeant Miller quickly closed distance on Smith, he braced himself against the door and the vehicle itself. Sergeant Miller had to command Smith to release his grip on the vehicle. While Smith released his grip, he then — while fully on the ground — ignored a second directive to place his hands behind his back, requiring Sergeant Miller to effect the arrest by moving Smith's arms and hands into a position allowing him to be handcuffed. A rational juror could find that this constituted reckless resistance under the law.

{¶ 44} Smith seeks to distinguish more egregious cases of resistance by characterizing his actions as a single reflexive step. We acknowledge that Sergeant Miller admitted that Smith did not himself use force and that at one point during cross-examination he agreed with Smith's trial counsel that the case hinged on Smith's single step backward, "an affirmative action step over that hose showing retreat." (Tr. 121.) We further agree with Smith that this case does not feature resistance as sustained and egregious as in *Carter*, 2022-Ohio-3901 (1st Dist.), or *Pubill*, 2023-Ohio-3875 (8th Dist.). If credited, however, Sergeant Miller's entire testimony and the associated body-camera footage, as well as all reasonable

inferences drawn therefrom, arguably show behavior exceeding an involuntary reflexive step backwards. A rational juror could therefore conclude that Smith's conduct, when considered in sequence and in its totality, at least temporarily hindered, in a reckless manner, Sergeant Miller's efforts to effectuate the arrest. Accordingly, there was sufficient evidence to support the jury's verdict on the sole charge of resisting arrest.

{¶ 45} Smith's fourth assignment of error is overruled.

D. Fifth Assignment of Error

{¶ 46} In his fifth assignment of error, Smith argues that his conviction was against the manifest weight of the evidence. "In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion." *State v. Hill*, 2013-Ohio-578, ¶ 32 (8th Dist.); *State v. Shirley*, 2025-Ohio-1064, ¶ 21 (8th Dist.); *State v. Wardlaw*, 2025-Ohio-2221, ¶ 67 (8th Dist.). In our manifest-weight analysis, we "must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflict in the evidence, the trier of fact *clearly lost its way and created such a miscarriage of justice* that the conviction must be reversed and a new trial ordered." (Emphasis added.) *State v. Spencer*, 2024-Ohio-5809, ¶ 26 (8th Dist.), citing *Thompkins*, 78 Ohio St.3d at 387. *See also Wardlaw* at ¶ 67.

{¶ 47} An appellate court will reverse on manifest weight "'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *State*

v. McLoyd, 2023-Ohio-4306, ¶ 40 (8th Dist.), quoting *Thompkins* at 387; *State v. Williams*, 2025-Ohio-2593, ¶ 41 (8th Dist.). This is because "in a manifest-weight review, the weight to be given the evidence and the credibility of the witnesses are primarily for the finder of fact." *State v. Metz*, 2019-Ohio-4054, ¶ 70 (8th Dist.); *see also Cleveland v. Johns*, 2024-Ohio-3301, ¶ 24 (8th Dist.). Indeed, ""'an appellate court may not substitute its own judgment for that of the finder of fact."'" *Id.* at ¶ 24, quoting *State v. Harris*, 2021-Ohio-856, ¶ 33 (8th Dist.), quoting *State v. Maldonado*, 2020-Ohio-5616, ¶ 40 (8th Dist.).

> **{¶ 48}** The Ohio Supreme Court very recently emphasized that
>
> "[i]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley* [*v. Volkman*], 2012-Ohio-2179, at ¶ 21. "'"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."'" [*In re*] *Z.C.*, 2023-Ohio-4703, at ¶ 14, quoting *Seasons Coal Co.* [*v. Cleveland*], 10 Ohio St.3d [77, 80, fn. 3 (1984)], quoting 5 Ohio Jur.3d, Appellate Review, § 603, at 191-192 (1978). "'The underlying rationale of giving deference to the findings of the [fact-finder] rests with the knowledge that the [fact-finder] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *Id.*, quoting *Seasons Coal* at 80.

State v. Reillo, 2026-Ohio-2701, ¶ 28. "The use of the word 'manifest' in the standard of review 'means that we can only reverse the trier of fact if its decision is very plainly or obviously contrary to the evidence.'" *State v. Harris*, 2020-Ohio-1497, ¶ 28 (8th Dist.), quoting *State v. Hernandez*, 2018-Ohio-5031, ¶ 20 (8th Dist.); *Wardlaw* at ¶ 67. "The jury may take note of any inconsistencies and resolve them accordingly, 'believ[ing] all, part, or none of a witness's testimony.'" *State v.*

Sheline, 2019-Ohio-528, ¶ 96 (8th Dist.), quoting *State v. Raver*, 2003-Ohio-958, ¶ 21 (10th Dist.).

{¶ 49} Smith's arguments as to manifest weight are largely duplicative of his sufficiency arguments. In addition, however, he does suggest that the body-camera recording is the "best evidence" in the case and "unimpeachable evidence of what happened." (Appellant's brief at p. 23.) He therefore argues that any analysis must turn on a "careful and thorough review of the video." *Id.* We have carefully and thoroughly reviewed the video, as well as the remainder of the record, including the complete trial transcript. We note, however, that the jury heard the live testimony of Sergeant Miller and was therefore able to observe his facial expressions and body language. The persuasive power of Sergeant Miller's testimony, the effectiveness of cross-examination in blunting it, and whether it was consistent or inconsistent with the body-camera footage were all for the jury to determine. Upon review, we find nothing in Sergeant Miller's testimony that was "so inconsistent as to material facts, so impeached, or so fantastical as to render it patently unbelievable." *Reillo* at ¶ 32.

{¶ 50} We therefore cannot find that the jury lost its way in this case. "'When there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not the province of this court to choose which version we believe.'" *Sheline* at ¶ 102, quoting *State v. Dyke*, 2002 Ohio App. LEXIS 1197, *6 (7th Dist. Mar. 13, 2002). *See also State v. Burton*, 2019-Ohio-2431, ¶ 55 (8th Dist.); *State v. Ford*, 2019-Ohio-2570, ¶ 79 (8th Dist.). A conviction is "not against the manifest weight of the evidence merely because the jury rejected the

defense's theories and found the state's version of the events to be more believable." *Sheline* at ¶ 102.

{¶ 51} Having reviewed the entire record, this is not the exceptional case in which the jury clearly lost its way and created a manifest miscarriage of justice. Smith's fifth assignment of error is overruled.

E. Sixth Assignment of Error

{¶ 52} In his sixth assignment of error, Smith argues that he received the ineffective assistance of counsel. He contends that his trial counsel was ineffective in failing to object to the "violent tendencies" testimony and in failing to object to the jury instruction defining "resist" to include "oppose." We find no merit to this assignment of error.

{¶ 53} Pursuant to the Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution, defendants in all criminal proceedings are entitled to the assistance of counsel for their defense. Furthermore, the United States Supreme Court has held that "'the right to counsel is the right to the *effective* assistance of counsel.'" (Emphasis added.) *Strickland v. Washington*, 466 U.S. 668, 686 (1984), quoting *McMann v. Richardson*, 397 U.S. 759, 771, fn. 14 (1970).

{¶ 54} To establish a claim of ineffective assistance of counsel, Smith "must demonstrate that (1) counsel's performance was deficient; and (2) the deficient performance prejudiced him so as to deprive him of a fair trial." *State v. Bennett*, 2023-Ohio-4412, ¶ 10 (8th Dist.), citing *State v. Trimble*, 2009-Ohio-2961, ¶ 98,

citing *Strickland* at 687. In *State v. Thompson*, 2024-Ohio-5910 (8th Dist.), this court stated that "'the failure to make a showing of *either* deficient performance or prejudice defeats a claim of ineffective assistance of counsel.'" (Emphasis added.) *Id.* at ¶ 5, quoting *In re S.A.*, 2019-Ohio-4782, ¶ 46 (8th Dist.). *See also State v. Davenport*, 2018-Ohio-2933, ¶ 25 (8th Dist.). To put it even more explicitly, "[t]he failure to prove either prong of *Strickland's* two-part test makes it unnecessary for a reviewing court to consider the other prong." *State v. McCann*, 2025-Ohio-966, ¶ 18 (8th Dist.), citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000).

{¶ 55} "Deficient performance, the first prong of the *Strickland* test, requires a showing 'that counsel's representation fell below an objective standard of reasonableness.'" *McCann* at ¶ 18, quoting *Strickland* at 688. "In Ohio, every properly licensed attorney is presumed to be competent and, therefore, a defendant claiming ineffective assistance of counsel bears the burden of proof." *In re S.A.* at ¶ 47, citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). *See also McCann* at ¶ 18. Moreover, "[c]ounsel's tactical decisions or trial strategy cannot form the basis for a claim of ineffective counsel." *In re S.A.* at ¶ 47, citing *State v. Foster*, 2010-Ohio-3186, ¶ 23 (8th Dist.). *See also State v. Clayton*, 62 Ohio St.2d 45 (1980).

{¶ 56} Reviewing courts "'will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *McCann* at ¶ 17, quoting *State v. Powell*, 2019-Ohio-4345, ¶ 69 (8th Dist.); *see also Strickland*, 466 U.S. at 689 (A reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of

reasonable professional assistance."). We therefore afford "great deference" to "trial counsel's performance and tactical decisions and trial strategies." *McCann* at ¶ 17. Even "debatable" or "questionable" trial tactics generally "do not constitute ineffective assistance of counsel." *State v. Harris*, 2022-Ohio-4630, ¶ 50 (8th Dist.), citing *State v. Scarton*, 2020-Ohio-2952, ¶ 90 (8th Dist.). "In evaluating a claim of ineffective assistance of counsel, a court must be mindful that there are countless ways for an attorney to provide effective assistance in a given case, and it must give great deference to counsel's performance." *Bennett* at ¶ 10. Appellate courts therefore "'ordinarily refrain from second-guessing strategic decisions counsel make at trial' . . . even where appellate counsel argues that he or she would have defended against the charges differently." *Scarton* at ¶ 90, quoting *State v. Myers*, 2002-Ohio-6658, ¶ 152. *See also State v. Stewart*, 2024-Ohio-5802, ¶ 54 (8th Dist.).

{¶ 57} Whether viewed through the lens of tactical decisions and strategy (the first prong of *Strickland*) or prejudice (the second prong of *Strickland*), we find no merit to Smith's argument that counsel was ineffective. First, with respect to the lack of objection to Sergeant Miller's "violent tendencies" testimony, Smith concedes in his opening brief that "defense counsel may have reasonably believed that objecting would only call attention to the evidence and worsen the prejudice to his client." (Appellant's brief at p. 14.) Indeed, this court has recognized, for example, "that a defendant may decide, as a matter of trial strategy, not to request a limiting instruction because of concerns that it will only emphasize in the juror's minds" the unfavorable evidence, "thereby reinforcing the prejudice." *Sperk*, 2009-Ohio-1615,

at ¶ 38 (8th Dist.). Therefore, as to the failure to object, Smith fails to satisfy the first prong of *Strickland*. Finally, the jury had admissible evidence of Smith's conduct independent of the "violent tendencies" warning, including the video itself. Accordingly, as to character evidence, Smith has failed to satisfy the second prong of *Strickland*.

{¶ 58} Smith's second argument concerning ineffective assistance of counsel returns to his contention that the jury instruction addressed in the second assignment of error was improper. Smith fails to satisfy either test under *Strickland*. Trial counsel is not ineffective for failing to lodge a meritless objection to jury instructions. Moreover, Smith cannot possibly demonstrate that any prejudice flowed from the jury being instructed, accurately, on the governing law.

{¶ 59} Smith's sixth assignment of error is overruled.

{¶ 60} Judgment affirmed.

It is ordered that appellee recover from 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 municipal 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.

DEENA R. CALABRESE, JUDGE

EMANUELLA D. GROVES, P.J., and
SEAN C. GALLAGHER, J., CONCUR