

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 31727

Appellee

v.

DWAUN JAMES

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR-2024-12-4070

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 9, 2026

HENSAL, Presiding Judge.

{¶1} Dwaun James appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Police and paramedics responded to a domestic disturbance call at a residence Mr. James shared with his wife (“Wife”). Wife said Mr. James used his hands to cut off her airway, and a paramedic observed contusions on the front and side of her neck. When Mr. James spoke with an officer, he said he used his hands to grab Wife and hold her down because she attacked him. Based on information and observations they made at the scene, the police arrested Mr. James.

{¶3} Mr. James was indicted on one count of strangulation and one count of domestic violence. Wife did not appear at trial, but the State introduced statements she made through other witnesses and body camera footage. A jury found Mr. James not guilty of strangulation but guilty of domestic violence. The court sentenced him to six months in prison.

{¶4} Mr. James now appeals from his conviction and assigns two errors for review.

II.

ASSIGNMENT OF ERROR I

ADMITTING [WIFE’S] STATEMENTS TO POLICE VIOLATED JAMES’ CONFRONTATION RIGHT UNDER THE SIXTH AMENDMENT.

{¶5} Mr. James argues the trial erred when it admitted Wife’s statements to the police because doing so violated his rights under the Confrontation Clause. For the following reasons, we reject his argument.

{¶6} “The question of whether statements are admissible under the Rules of Evidence and the question of whether they are admissible under the Confrontation Clause are separate inquiries.” *State v. Henning*, 2019-Ohio-2200, ¶ 17 (9th Dist.). The federal Confrontation Clause affords criminal defendants the right to confront witnesses against them. U.S. Const., amend. VI. It applies to testimonial statements. *State v. Stahl*, 2006-Ohio-5482, ¶ 15. Before a testimonial statement from an unavailable declarant can be admitted at trial, a criminal defendant must have had a prior opportunity to cross-examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). “Statements made for the purpose of medical diagnosis and treatment are nontestimonial.” *State v. Arnold*, 2010-Ohio-2742, ¶ 28. *See also* Evid.R. 803(4) (providing a hearsay exception for statements made for the purpose of medical diagnosis and treatment). Conversely, “statements made to agents of the police for the primary purpose of forensic investigation are testimonial.” *Arnold* at ¶ 28.

{¶7} A defendant who fails to preserve an objection under the Confrontation Clause may argue plain error on appeal. *See State v. Miller*, 2023-Ohio-1466, ¶ 15 (9th Dist.); *State v. Jordan*, 2014-Ohio-2857, ¶ 13 (9th Dist.). However, this Court will not construct a claim of plain error on

an appellant's behalf. *See State v. Noel*, 2026-Ohio-1144, ¶ 20 (9th Dist.); *State v. Brown*, 2021-Ohio-2161, ¶ 15 (9th Dist.).

{¶8} The State presented two witnesses at trial: a paramedic and a police officer. Both individuals responded to a domestic disturbance call at the home Mr. James shared with Wife. The paramedic testified that, when she approached the house, she could hear the parties fighting. She indicated that Wife appeared to be “pretty upset.” Before the paramedic could share any of Wife's statements, Mr. James objected. He did not offer a basis for his objection on the record. The trial court addressed his objection at a sidebar, but the sidebar was not recorded. The sidebar concluded with the court sustaining the objection “at this point.”

{¶9} When the paramedic resumed her testimony, she reviewed the medical report she completed while assessing Wife. She testified that Wife was visibly upset and crying. Additionally, Wife told the paramedic that Mr. James “had choked her after an argument.” Mr. James did not object to that testimony.

{¶10} Officer Justin Ingham indicated that Wife was crying when he arrived on scene. Officer Ingham confirmed that his body camera captured his exchange with Wife and Mr. James. The State sought to play two recordings from his body camera. The first recording, labeled Exhibit 2-1, captured the officer's initial contact with the parties. The second recording, labeled Exhibit 2-2, captured a one-on-one exchange between the officer and Mr. James.

{¶11} When the State sought to play Exhibit 2-1, Mr. James objected. Another sidebar ensued, the contents of which were not recorded. At the conclusion of the sidebar, the court overruled the objection.

{¶12} The State began playing Exhibit 2-1 for the jury. The recording showed Wife sitting on a couch crying and hyperventilating. It also captured her statements that Mr. James had

cut off her airway and that she thought she was going to die. When the State asked Officer Ingham about Wife's statements, Mr. James objected. At sidebar, he clarified that he was objecting based on hearsay. The court overruled his objection. The court found that the excited utterance exception applied to Wife's statements.

{¶13} When the State finished questioning its witnesses, it moved to admit its exhibits.

Mr. James objected to the admission of Exhibit 2-1. His argument was as follows:

[DEFENSE COUNSEL]: My basis, Your Honor, is there's a lot of hearsay, Your Honor, on the video.

Your Honor, my client wasn't read his Miranda Rights, Your Honor.

The alleged victim is not here to testify.

And my client's confrontation clause rights have not -- have not been adhered to, Your Honor.

The trial court noted and overruled the objection. As to the hearsay issue, the court found that Wife's statements were admissible as excited utterances. The court did not address the Confrontation Clause.

{¶14} After the State rested, Mr. James moved for a judgment of acquittal. He argued that the State had failed to present sufficient evidence because Wife did not testify. He argued:

The State's case rests primarily on hearsay statements; and that cannot be admitted under the confrontation clause, Crawford v. Washington, 541 U.S. 36; State v. Smith 2024-Ohio-5745.

No eye witnesses, Your Honor.

Insufficient proof of elements.

And constitutional issues, as stated, in regards to his confrontational clause right, and testimonial statements, Your Honor.

The State responded with several arguments, one of which was that Wife's statements were excited utterances. The court agreed the statements were admissible for that reason and ultimately overruled the motion for acquittal.

{¶15} Following a recess, the trial court addressed the parties. The court asked Mr. James whether he had objected to the paramedic's testimony about Wife's statements based on hearsay. Mr. James agreed that was the basis of his objection. The court indicated that it had overruled his objection because it found Wife's statements to the paramedic were made in furtherance of medical treatment. The trial judge asked Mr. James whether she had failed to address any portion of his objection. Mr. James denied that she had.

{¶16} Next, the trial court asked the parties to confirm that Mr. James had objected to Officer Ingham's testimony based on *Miranda* and hearsay. The trial judge asked Mr. James whether she had failed to address any portion of his argument regarding the admission of the officer's testimony and statements made on the body camera recordings. Mr. James responded: "No, Your Honor. I objected to it as hearsay; you ruled against me, Your Honor."

{¶17} Finally, when reviewing jury instructions, the trial court noted that Mr. James had submitted a proposed instruction. The instruction addressed how the jury should handle any statements or answers stricken by the court. The proposed instruction indicated that the jury should limit its consideration to properly admitted evidence because certain hearsay statements, if considered, "would deny [Mr. James] the opportunity to cross-examine those witnesses." The court found the proposed instruction unwarranted. It noted that it had not struck any answers because it had overruled Mr. James' objections. The court stated: "Because the Court's ruling went to exceptions to the hearsay rule, I don't believe we have a Crawford issue." When the court asked Mr. James if there was anything he wished to add, he only argued that an instruction "in

regards to hearsay statements objectively would help the jury determine [his] guilt or innocence”

{¶18} On appeal, Mr. James argues the trial court erred when it admitted Wife’s statements to Officer Ingham because Wife did not testify, her statements were testimonial in nature, and he never had an opportunity to cross-examine her. He notes that the trial court only considered the admissibility of Wife’s statements under the Rules of Evidence and did not perform a separate Confrontation Clause analysis. Mr. James presents this Court with case law about the primary-purpose test, the necessity of an ongoing emergency, and the “unique analytical circumstances” present in domestic violence cases. He asks this Court to vacate his convictions due to a violation of his rights under the Confrontation Clause.

{¶19} Upon review, we cannot conclude that Mr. James preserved his Confrontation Clause arguments for appeal. The record reflects that he did not contemporaneously object to any testimony or exhibit based on the Confrontation Clause. *See State v. Paul*, 2024-Ohio-1874, ¶ 35 (9th Dist.) (objection forfeited when defendant fails to contemporaneously object). The first time he referenced the Confrontation Clause was when the State sought to admit its exhibits. Even then, his argument was extremely limited. He cited the Confrontation Clause in name only. He never presented the trial court with any argument about the primary purpose test, the necessity of an ongoing emergency, or the unique application of the primary purpose test in domestic violence cases. Moreover, when the trial court construed his arguments as sounding strictly in hearsay, Mr. James never corrected that interpretation. The trial court specifically asked Mr. James whether it had failed to address any aspect of his argument, and Mr. James denied that it had done so. He also remained silent when the court stated that it did not believe it had been presented with a

Crawford issue. Based on the record before us, we must conclude that Mr. James forfeited his argument for review.

{¶20} Mr. James has not presented us with a claim of plain error, and we will not construct an argument on his behalf. *See Noel*, 2026-Ohio-1144, at ¶ 20 (9th Dist.); *Brown*, 2021-Ohio-2161, at ¶ 15 (9th Dist.). Further, this Court notes that his argument only addresses the admission of Wife’s statements through Officer Ingham. Mr. James has not challenged the admission of the paramedic’s testimony. As noted, the paramedic specifically testified that Wife said Mr. James “had choked her after an argument.” It is unclear how the admission of Wife’s statements through Officer Ingham prejudiced Mr. James given that Wife’s statement was also admitted through the paramedic’s testimony. *See Brown* at ¶ 11. For the foregoing reasons, his first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED PLAIN ERROR IN ADMITTING UNAUTHENTICATED PHOTOS OF [WIFE] AND INGHAM’S TESTIMONY ABOUT THEM.

{¶21} Mr. James argues the trial court committed plain error when it admitted two photographs of Wife and Officer Ingham’s testimony about the photographs. “To establish plain error, one must show (1) an error occurred, i.e., a deviation from a legal rule, (2) the error is plain, i.e., an obvious defect in the proceedings, and (3) the error affected a substantial right, i.e., affected the outcome of the proceedings.” *State v. Grant*, 2019-Ohio-3561, ¶ 5 (9th Dist.). “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. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶22} The State introduced two photographs of Wife. The first was a side profile view wherein she was pointing to her right cheek. The second depicted her lifting her head to expose her neck, which bore several red marks, a scratch, and light bruising. Officer Ingham testified that he did not speak with Wife one-on-one, but he observed her neck. He testified that the first photograph showed the area where Wife said she was struck in the face by Mr. James. He testified that the second photograph showed Wife's neck where she said she had been choked.

{¶23} Mr. James argues the trial court erred by admitting the photographs of Wife and Officer Ingham's testimony about the photographs because the State never authenticated them. He notes that Officer Ingham never said he took the photographs or that they accurately represented Wife at the time of the alleged incident. According to Mr. James, Officer Ingham lacked the personal knowledge required for authentication because he never had a one-on-one conversation with Wife. Mr. James claims the admission of the photographs and Officer Ingham's testimony about them prejudiced his defense because the State failed to introduce any other evidence to prove Wife's injuries.

{¶24} Assuming without deciding that the trial court erred by admitting the photographs and testimony about the photographs, we must nevertheless conclude that Mr. James has not shown the error affected the outcome of his trial. *See Grant*, 2019-Ohio-3561, at ¶ 5 (9th Dist.). The paramedic who examined Wife testified that she observed contusions on the front and right side of Wife's neck. She agreed that those injuries were consistent with Wife's statement that Mr. James had choked her. Additionally, Officer Ingham testified that he spoke privately with Mr. James. That conversation was captured on Officer Ingham's body camera. Officer Ingham testified that Mr. James admitted grabbing Wife by the robe around her neck area and pinning her down. On the recording, Mr. James mimed a grabbing and pushing motion with his clenched

hands as he explained the manner in which he held down Wife. The jury, therefore, was presented with other evidence about Wife's injuries in the form of her statement to the paramedic, the paramedic's observations, and Mr. James' own description of his actions. Mr. James has not shown that, but for the admission of the photographs and testimony about the photographs, the jury would not have convicted him of domestic violence. Upon review, this case does not present exceptional circumstances where taking notice of any alleged error would prevent a manifest miscarriage of justice. *See Long*, 53 Ohio St.2d 91 at paragraph three of the syllabus. Accordingly, Mr. James' second assignment of error is overruled.

III.

{¶25} Mr. James' assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

SUTTON, J.
STEVENSON, J.
CONCUR.

APPEARANCES:

JOSEPH SHELL, Attorney at Law, for Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant
Prosecuting Attorney, for Appellee.