[Cite as *State v. Lawrence*, 2024-Ohio-4792.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113490
v.	:	
SCOTT LAWRENCE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 3, 2024

Criminal Appeal from the Cuyahoga County Common Pleas Court
Case No. CR-22-668874-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Adrienne E. Linnick, Assistant Prosecuting Attorney, *for appellee*.

The Law Office of Schlachet and Levy and Eric M. Levy, *for appellant*.

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Scott Lawrence ("Lawrence") appeals his convictions and sentence and asks this court to vacate. We affirm Lawrence's convictions and sentence.

{¶2} On November 1, 2023, after a jury trial, Lawrence was found guilty of two counts kidnapping, first-degree felonies, in violation of R.C. 2905.01(A)(2) and (4); and one count of attempted, illegal use of minor in nudity-oriented material or performance, a third-degree felony, in violation of R.C. 2923.02 and 2907.323(A)(1). On November 21, 2023, the trial court held a hearing on the sexually violent predator specifications attached to the kidnapping counts. The trial court found Lawrence not guilty of the specifications.

{¶3} After considering all required factors of law, the trial court found that a prison term was consistent with the purposes and principles of R.C. 2929.11 and the seriousness and recidivism factors pursuant to R.C. 2929.12 and sentenced Lawrence to a minimum, aggregate prison term of five years and a maximum prison term of seven years and six months. For the purposes of sentencing, the kidnapping counts merged, and Lawrence was sentenced on the first count of kidnapping. His three-year imprisonment sentence for the attempted, illegal use of minor in nudity-oriented material or performance was ordered to run concurrently to the kidnapping sentence.

I. Facts and Procedural History

A. Officer Bailey Gannon's Testimony

{¶4} On October 30, 2023, Lawrence's trial commenced. First, the State introduced testimony from Officer Bailey Gannon ("Ofc. Gannon"). Ofc. Gannon testified that on January 5, 2022, the victim's mother, N.S., came into the police station to file a report concerning the inappropriate relationship between the victim and Lawrence. Lawrence was a friend of N.S.'s father. N.S. told Ofc. Gannon that Lawrence picked up the victim to take him to donate clothes to the men's shelter.

{¶5} While Lawrence and the victim were driving in Lawrence's vehicle, they started talking about wrestling, and Lawrence started rubbing the victim's leg inappropriately. After taking N.S.'s report, Ofc. Gannon notified his supervisors and forwarded the report to the child abuse sex crimes unit.

{¶6} On cross-examination, Ofc. Gannon testified that he did not speak with the victim, only the victim's mother. Ofc. Gannon did not have any information other than what N.S. shared in her report.

B. N.S.'s, the victim's mother's, Testimony

{¶7} Second, the victim's mother, N.S., testified. N.S. testified that her son, the victim, was currently 16 years old, and that Lawrence, a 69-year-old man, was a friend of her father who would come to her father's home for Sunday family dinners. N.S. testified that on December 19, 2021, the victim and Lawrence were going to take coats to veterans. After speaking with the victim throughout the day, N.S. learned that Lawrence took the victim to his home. The victim arrived back

home later that day. He told N.S. that he and Lawrence went to the store and Lawrence's apartment.

{¶8} N.S. testified that, on the following day, the victim told her what actually happened. She asked the victim if he wanted her to contact police officers regarding the incident. Because the victim was only fourteen at the time, N.S. was concerned about him retelling the story.

{¶9} On cross-examination, N.S. testified that the victim had his cell phone with him the day that Lawrence picked him up and took him to his apartment. N.S. stated that the victim had expressed that he was ready to come home, but there was no indication that Lawrence was preventing him from leaving.

C. The Victim's Testimony

{¶10} Third, the victim testified at Lawrence's trial. The victim testified that Lawrence picked him up from his home to donate some boxes to the veterans. He testified that the conversation between he and Lawrence was normal at first and then got uncomfortable. Lawrence asked the victim if he liked to masturbate, watched porn, and other topics that made the victim uncomfortable. Lawrence also asked the victim if he would take pictures for money when he was older. Lawrence explained to the victim that Lawrence took pictures for money when he was younger.

{¶11} The victim then testified that Lawrence stated they were not going to actually deliver boxes as originally planned, but instead they went to Lawrence's

apartment after picking up some food. Once at Lawrence's apartment, the victim tried to fix Lawrence's internet router but was unable. Lawrence and the victim then started eating, and afterwards Lawrence began speaking with the victim about fetishes and taking pictures. Lawrence explained to the victim that he had a fetish for children, boys and girls, and he takes pictures of them.

{¶12} The victim stated that he was nervous during this exchange because he did not know what to do or say. Lawrence asked the victim if he wanted to take pictures and offered to pay the victim. The victim responded negatively because he did not feel comfortable. Lawrence told the victim that he would have to lift his shirt up and pull his pants down below his knees, exposing his genitals, for the pictures.

{¶13} The victim explained that he did not leave the apartment because he did not know where he was and believed calling his mother was not an option because she was over an hour away. The victim stated that the conversations took place while he and Lawrence were sitting on the couch. Lawrence told the victim that he would like to show him a wrestling move and touched the victim's leg. The victim declined stating that his neck, back, and legs hurt, and Lawrence offered to give him a massage. Lawrence touched the victim's shin to his upper thigh, while he was kneeling in front of the victim.

{¶14} The victim asked Lawrence what time his mother wanted him home, and Lawrence responded that he would take the victim home but did not take him

home right away. While in the car, Lawrence nudged the victim and told him he was making him nervous because he was quiet. Lawrence paid the victim for helping him with the router once they returned to the victim's home. Before he left, Lawrence told the victim not to tell anybody what they talked about and made the victim promise.

{¶15} The victim testified that he did not want to tell anyone what happened because it was very awkward for him, but decided to tell his mom, N.S., a day or two after the incident. The victim stated that he told his mother that Lawrence was kind of weird, and then proceeded to tell her everything that happened. N.S. took the victim to the police department in their town first. The police department instructed them to go to the Cleveland Police Department because that is where the incident took place.

{¶16} On cross-examination, the victim testified that initially he thought he was going to donate boxes to veterans, but on the way to get food, Lawrence told him that he needed the victim to fix his router at his home. During this testimony, defense counsel played a video of the victim's interview with a social worker. The court stated: "The purpose of playing the video is because the witness has stated he does not remember the question that you asked. This is for the purposes of refreshing his recollection, which is why the jury is not here." Tr. 315.

{¶17} The video demonstrated that the victim told the social worker that Lawrence wanted to take pictures of his body below the knees. However, the victim

stated that he made a mistake and meant to say everything below the waist. The victim also testified that Lawrence never prevented him from using his cell phone. The victim also clarified again that he meant to say Lawrence told him to pull his pants down below his knees to expose his genitals.

D. Courtney Wilson's Testimony

{¶18} Next, Courtney Wilson ("Wilson"), a social worker at the child advocacy center in Mahoning County, testified that she conducted an interview with the victim on January 26, 2022. Wilson stated that the victim came in for an evaluation with N.S. Wilson testified that the victim was being referred to her for sexual abuse, for which she interviewed the victim concerning the details of the alleged abuse. Wilson made a recommendation that the victim receive trauma focus, cognitive behavioral therapy. After this interview, Wilson did not have any further contact with the victim.

E. Lawrence's Statement

{¶19} Next, the State called an assistant county prosecutor to read a portion of Lawrence's prior hearing testimony. The trial court explained to the jury that the prosecutor was not testifying but only reading a statement given by Lawrence at a previous hearing. The statement was read as follows:

> When I realized where I was at and what I was doing and who I was doing it to, I turned around and I told him, I said let me take you home, bla, bla, bla. I had manipulated this whole situation and, you

> know, I just really screwed up. I was glad that, you know, I didn't do any touching. I didn't. You know, it was all verbal what if somebody, you know, offered you money, what if somebody offered you, you know, this, that or the other as far as the questioning of the minor went, so that's pretty much how it went.

Tr. 379.

{¶20} When asked if Lawrence took pictures of the victim or exposed himself, he stated: "Oh, no, sir. No, sir. No, I didn't. I didn't ask him to take pictures of my private area. I asked if he could be paid and take pictures of his private area." Tr. 380. Lawrence stated that the victim did not show him his private area or undress. He also stated that after the victim told him he was not comfortable with this conversation, he offered to take the victim home.

F. Detective Cynthia Adkins's Testimony

{¶21} Next, Detective Cynthia Adkins ("Det. Adkins") testified that she was assigned to the City of Cleveland Division of Police sex crimes and child abuse unit. Adkins testified that she received a report involving a child, so she contacted the intake number to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). Det. Adkins spoke to the agency and was informed that there was already a reported incident to the Mahoning County Division of Children Services ("MSDCS"), the county where the victim resides.

{¶22} Det. Adkins contacted N.S. and took a statement from her over the phone and recorded it. Then she took a statement from N.S.'s boyfriend, F.C., and recorded it as well. Det. Adkins stated that she learned the incident took place on

December 19, 2021, and the victim disclosed to N.S. and F.C. two days later. Det. Adkins also learned that the victim shared the details of the incident with a Mahoning County social worker.

G. Crim.R. 29 Motion for Acquittal

{¶23} At the end of the State's case, the defense made a motion for acquittal arguing that the State did not prove the necessary elements of kidnapping. Defense counsel also argued that Cuyahoga County was not the correct venue to try the case because it had not been established that the crimes took place in Cleveland. The trial court denied the motion. Defense counsel rested its case as well, and the jury found Lawrence guilty of all three counts.

{¶24} On November 21, 2023, the trial court held a hearing on the sexually violent predator specifications attached to the kidnapping counts. The trial court found Lawrence not guilty of the specifications. The trial court sentenced Lawrence to a minimum, aggregate prison term of five years and a maximum prison term of seven years and six months. Lawrence filed this appeal and assigned five errors for our review:

1. The trial court committed plain error when it failed to give a safe place unharmed jury instruction on the kidnapping charges in counts one and two;

2. The appellant was convicted on all counts absent sufficient evidence;

3. The appellant's convictions must be vacated where he was convicted against the manifest weight of the evidence;

4. The appellant was denied his Sixth Amendment right to effective trial counsel where trial counsel acted ineffectively on his behalf; and

5. The appellant was not provided the full advisement of how an indefinite sentence would be pursuant to R.C. 2929.19(B)(2)(c).

II. Jury Instruction

A. Plain Error

{¶25} "'On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection.'" *State v. Schwendeman*, 2018-Ohio-240, ¶ 15 (4th Dist.), quoting Crim.R. 30(A). Lawrence did not object to any omission in the court's instructions. "'A party's failure to object to jury instructions before the jury retires constitutes a waiver of any claim of error regarding the instructions, absent plain error.'" *Id.* quoting *State v. Cooper*, 2007-Ohio-1186, ¶ 30 (4th Dist.).

{¶26} "We apply the doctrine of plain error cautiously and only under exceptional circumstances to prevent a manifest miscarriage of justice." *Id.* at ¶ 16 "In that regard, '[t]he test for plain error is stringent.'" *State v. Ellison*, 2017-Ohio-284, ¶ 27 (4th Dist.).

{¶27} "'Plain error is an obvious error or defect in the trial court proceeding that affects a substantial right.'" *State v. Heaggans*, 2018-Ohio-4328, ¶ 29 (8th Dist.), quoting *State v. Gray*, 2010-Ohio-240, ¶ 17 (8th Dist.), citing *State v. Long*, 53 Ohio St.2d 91 (1978). "We take notice of plain error only in exceptional circumstances to avoid a miscarriage of justice." *Id.*, citing *Long* at 95. "Further, the party asserting the error bears the burden of demonstrating plain error." *Id.*, citing *State v. Crawford*, 2016-Ohio-7779, ¶ 13 (8th Dist.), citing *State v. McFeeture*, 2015-Ohio-1814, ¶ 84 (8th Dist.).

B. Standard of Review

{¶28} "Our review of whether a jury instruction is warranted is de novo." *Schwendeman* at ¶ 17, citing *State v. Depew*, 2002-Ohio-6158, ¶ 24 (4th Dist.) ("While a trial court has some discretion in the actual wording of an instruction, the issue of whether an instruction is required presents a question of law for de novo review.") In determining whether to give a requested jury instruction, a trial court reviews the sufficiency of the evidence to support the requested instruction. *Id.*, citing *State v. Hively*, 2015-Ohio-2297, ¶ 20 (4th Dist.). "A trial court has no obligation to give an instruction if the evidence does not warrant it." *Id.*, citing *State v. Hamilton*, 2011-Ohio-2783, ¶ 70 (4th Dist.).

C. Law and Analysis

{¶29} In Lawrence's first assignment of error, he argues that the trial court committed plain error when it failed to give a safe-place-unharmed jury instruction

on the two kidnapping charges. Additionally, in the first part of Lawrence's fourth assignment of error, he contends that his trial counsel was ineffective because it did not request the jury instruction. We will address both. "Ohio's kidnapping statute reduces the level of the offense from a first-degree felony to a second-degree felony if the victim is released in a 'safe place unharmed.'" *State v. Mohamed*, 2017-Ohio-7468, ¶ 1, citing R.C. 2905.01.

{¶30} "'Unharmed'" means 'not harmed.'" *Id.* at ¶ 14, quoting *Webster's Third New International Dictionary* 2497 (2002). "'Harm' is defined in the dictionary as 'physical or mental damage.'" *Id.*, citing *id.* at 1034. "Under its plain meaning, the statute includes both physical and psychological harm." *Id.*

{¶31} Lawrence argues that the facts required the jury to consider the safe place unharmed mitigating factor, and it would have reduced both kidnapping convictions from first-degree to second-degree felonies. Lawrence also contends that he did not perform any act against the victim's will, and he asked for consent. When consent was not given, Lawrence did not act.

{¶32} Our instant case is analogous to the *Mohamed* case. The Ohio Supreme Court, in *Mohamed*, reversed this court's decision, where this court held that the trial court had committed plain error in failing to provide the safe place unharmed jury instruction. *Id.* The Court stated:

> In the proceeding below, the court of appeals reversed a first-degree kidnapping conviction based upon its determination that trial counsel had been ineffective in failing to request a safe-place-unharmed

> instruction and that the trial judge had committed plain error by not sua sponte providing the instruction. The court of appeals reasoned that there was no physical harm to the victim and that "harm," for purposes of R.C. 2905.01, could not include psychological harm. We see it differently. We apply the plain meaning of "harm" to include both physical and psychological harm. And with "harm" properly defined, we conclude that on the record before us, counsel was not ineffective in failing to request such an instruction; rather, his not requesting the instruction fell within the gamut of trial strategy. Further, we find no plain error in the judge's failure to give the instruction. Thus, we reverse the judgment of the court of appeals and reinstate the judgment of the trial court.

Mohamed, 2017-Ohio-7468, at ¶ 2.

{¶33} Despite Lawrence's claim that *Mohamed* is distinguishable, we follow the Court's decision in *Mohamed* because it is relevant to the facts in our instance case. The Court in *Mohamed* discussed whether trial counsel was effective for not requesting the jury instruction and the trial court erred by not sua sponte providing it. Considering the record in its entirety, we determine that Lawrence has failed to overcome the presumption that counsel's failure to request the safe-place-unharmed instruction was the result not of ineffectiveness but of trial strategy. To show that his trial counsel was ineffective, Lawrence is required to prove that his counsel's performance fell below an objective standard of reasonable representation and that the deficiency prejudiced him. *See id*. at ¶ 17. *See, e.g., State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus, citing *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984).

{¶34} "Questionable trial strategies and tactics, however, do not rise to the level of ineffective assistance of counsel." *Mohamed* at ¶ 18, citing *State v. Clayton*, 62 Ohio St.2d 45, 49 (1980). "'To justify a finding of ineffective assistance of counsel, the appellant must overcome a strong presumption that, under the circumstances, the challenged action might be considered sound trial strategy.'" *Id.*, quoting *State v. Carter*, 72 Ohio St.3d 545, 558 (1995), citing *Strickland* at 689.

{¶35} In this case, Lawrence's trial counsel's strategy seemed to be that Lawrence did not kidnap the victim because the victim could request to leave at any time. However, the victim testified that when he requested to leave, Lawrence did not honor the request right away. If trial counsel requested the jury instruction, it would seem as if Lawrence was admitting the kidnapping but wanting credit for returning the victim to his home safely and physically unharmed.

{¶36} "Understood in this context, defense counsel's decision not to request a jury instruction concerning the safe-place-unharmed defense would seem to be part of a reasonable trial strategy." *Mohamed*, 2017-Ohio-7468, at ¶ 22. The theory that defense counsel presented to the jury was that the victim had not been held against his will. Counsel could not at the same time have credibly argued to the jury that even if Lawrence did kidnap the victim, he released him in a safe place unharmed. *See id.* *See, e.g., State v. Keith*, 79 Ohio St.3d 514, 536 (1997) (failure

to present mitigating evidence not "demonstrably deficient trial strategy" when it was at least arguably consistent with defendant's claim of complete innocence).

{¶37} Furthermore, a safe-place-unharmed instruction would have opened the door for the prosecution to argue that Lawrence had caused profound psychological damage to the victim. After Wilson, the social worker, interviewed the victim, she made a recommendation that the victim receive trauma focus, cognitive behavioral therapy. It does not seem likely that she would have made this recommendation if the victim had not been psychologically harmed. Defense counsel may well — and quite reasonably — have thought it better to avoid discussion of lasting psychological and emotional injury done to the victim.

{¶38} Like the Court in *Mohamed*, "our determination that counsel was not ineffective is premised on the appropriate definition of 'unharmed' in R.C. 2905.01." *Id*. at ¶ 24. "Under the proper definition of 'unharmed' in R.C. 2905.01, it was not ineffective assistance for counsel to not ask for the instruction." *Id*. Doing so could have undermined Lawrence's trial counsel's trial strategy and opened the door for testimony about the psychological harm suffered by the victim. *Id*.

{¶39} Lawrence has not overcome the presumption that his counsel's failure to request the safe-place-unharmed instruction was a matter of trial strategy.

{¶40} The Court in *Mohamed* then discussed whether the trial court committed plain error by failing to provide the jury instruction. As previously stated: "To establish plain error, a defendant must show that (1) there was an error or deviation from a legal rule, (2) the error was plain and obvious, and (3) the error affected the outcome of the trial." *Id.* at ¶ 26, citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). "We find plain error only 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *Id.*, quoting *Clayton*, 62 Ohio St.2d at 47, quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶41} "When the decision not to request a particular jury instruction may be deemed to be part of a reasonable trial strategy, we will not find plain error." *Id.* at ¶ 27, citing *Clayton* at 47-48; *State v. Claytor*, 61 Ohio St.3d 234, 240 (1991). "The same goes here. Having determined that counsel's decision not to request an instruction on the safe-place-unharmed defense falls within a reasonable trial strategy, we will not find that the trial judge committed plain error in failing to provide the unrequested instruction." *Id.* Lawrence has failed to show that the trial judge's decision not to give the jury the instruction was an obvious error, that it deviated from clear legal rules, or that it affected the outcome of the trial.

{¶42} Therefore, Lawrence's first and the first part of his fourth assignments of error are overruled.

III. Sufficiency of the Evidence

A. Standard of Review

{¶43} Accordingly,

> [w]ith respect to sufficiency of the evidence, "'sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." *Black's Law Dictionary* 1433 (6 Ed.1990). *See also* Crim.R. 29(A) (motion for judgment of acquittal can be granted by the trial court if the evidence is insufficient to sustain a conviction). In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955). In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida*, 457 U.S. 31, 45, 102 S.Ct. 2211,72 L.Ed.2d 652 (1982), citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

State v. Thompkins, 78 Ohio St.3d 380, 386 (1997).

B. Law and Analysis

{¶44} In Lawrence's second assignment of error, he argues that there was not sufficient evidence to convict him on all counts. First, Lawrence contends that his convictions on both kidnapping counts are required to be vacated due to a failure to consider the safe-place-unharmed defense. We have addressed this argument in his first assignment of error and determined that it was without merit. Second, Lawrence argues that the evidence submitted at trial was insufficient to establish that any element of any offense took place within Cuyahoga County. Lawrence raises the issue of venue and raised this issue at trial.

{¶45} "Venue refers to the proper place in which to try a criminal matter." *State v. May*, 2015-Ohio-4275, ¶ 20 (8th Dist.) "Under Article I, Section 10 of the

Ohio Constitution and R.C. 2901.12, 'evidence of proper venue must be presented in order to sustain a conviction for an offense.'" *Id.*, quoting *State v. Hampton*, 2012-Ohio-5688, ¶ 20. "Article I, Section 10 of the Ohio Constitution provides, in relevant part: 'In any trial, in any court, the party accused shall be allowed. . . a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.'" *Id.* "Former R.C. 2901.12(A) provides: 'The trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element thereof was committed.'" *Id.*

{¶46} "Venue is not a material element of an offense charged, but it is, nevertheless, a fact the state must prove beyond a reasonable doubt in a criminal prosecution unless it is waived by the defendant." *Id.* at ¶ 21, citing *State v. Headley*, 6 Ohio St.3d 475, 477 (1983), citing *State v. Draggo*, 65 Ohio St.2d 88, 90 (1981). "'A conviction may not be had in a criminal case where the proof fails to show that the crime alleged in the indictment occurred in the county where the indictment was returned.'" *Id.*, quoting *Hampton* at ¶ 19, quoting *State v. Nevius*, 147 Ohio St. 263 (1947), paragraph three of the syllabus.

{¶47} Lawrence argues that the trial court erred in denying his Crim.R. 29 motion for acquittal on venue grounds because there is no evidence that, beyond a reasonable doubt, that Lawrence took the victim to an apartment in Cleveland, Cuyahoga County, Ohio. "However, venue does not need to be proven in express

terms, but rather, can be established by the totality of facts and circumstances of the case." *Id.* at ¶ 22, citing *State v. Price*, 2015-Ohio-1199, ¶ 36 (7th Dist.), citing *State v. Chintalapalli*, 88 Ohio St.3d 43, 45 (2000); *Headley* at 477; *Hampton* at ¶ 19 ("'[I]t is not essential that the venue of the crime be proven in express terms, provided it be established by all the facts and circumstances in the case, beyond a reasonable doubt, that the crime was committed in the county and state as alleged in the indictment.'"), quoting *State v. Dickerson*, 77 Ohio St. 34 (1907), paragraph one of the syllabus.

{¶48} Upon reviewing the entire record in this case, we find that the State presented sufficient evidence to establish Cuyahoga County as the proper venue for the case. The victim's testimony established that the incidents took place at Lawrence's apartment in Cleveland, which is geographically located in Cuyahoga County. Tr. 285. The victim testified that he had previously been to Lawrence's apartment with his grandfather once or twice. Tr. 286. *See State v. Love*, 2019-Ohio-3168, ¶ 29. Finally, the victim stated that he was an hour away from home.

{¶49} "Venue may be established by circumstantial evidence." *May*, 2015-Ohio-4275, at ¶ 24. It was not necessary, as Lawrence contends, for the State to provide definitive proof that Lawrence took the victim to his apartment in Cleveland. *Id. See, e.g., State v. Wheat*, 2005-Ohio-6958, ¶ 10, 13 (10th Dist.) (although no witness testified that offenses at issue occurred in Franklin County, State presented sufficient circumstantial evidence as to the location of the crime to

establish venue); *State v. Martin*, 2002-Ohio-4769, ¶ 27-30 (10th Dist.) (where there was no direct testimony that offense at issue occurred in Franklin County, sufficient circumstantial evidence existed to establish venue based on testimony of responding police officer that he was employed by the city of Columbus, assigned to the Franklin County area and dispatched to a specific address in the area and video that showed that location of offense was in an urban setting and there was no evidence to suggest that the offense occurred outside Franklin County).

{¶50} We determine that the State presented sufficient evidence that the crimes occurred in Cuyahoga County.

{¶51} Third, Lawrence argues that there is not sufficient evidence to convict him of kidnapping. We will address the first count of kidnapping since the two counts merged for the purposes of sentencing.

> When counts in an indictment are allied offenses, and there is sufficient evidence to support the offense on which the State elects to have the defendant sentenced, the appellate court need not consider the sufficiency of the evidence on the count that is subject to merger because any error would be harmless.

State v. Ramos, 2016-Ohio-7685, ¶ 14 (8th Dist.).

{¶52} Lawrence was found guilty of kidnapping, in violation of R.C. 2905.01(A)(4), which states:

> No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following

> purposes: To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will.

{¶53} R.C. 2907.01(C) defines sexual activity as "sexual conduct or sexual contact, or both." R.C. 2907.01(A) defines sexual conduct as:

> vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

R.C. 2907.01(B) defines sexual contact as: "any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person."

{¶54} Lawrence told the victim's mother that he was taking the victim to take coats to the veterans. The victim testified that Lawrence picked him up from his home to donate some boxes to the veterans. The victim then testified that Lawrence stated they were not going to actually deliver boxes as originally planned, but instead they went to Lawrence's apartment after picking up some food. While at Lawrence's apartment, Lawrence told the victim that he would like to show him a wrestling move and touched the victim's leg. The victim declined stating that his neck, back, and legs hurt, and Lawrence offered to give him a massage. Lawrence touched the victim's shin to his upper thigh, while he was kneeling in front of the victim.

{¶55} Based on the testimony of the victim, the record reflects that Lawrence used the deception of participating in charity work to lure the victim to his apartment. Both the victim and the victim's mother testified that Lawrence was taking the victim to deliver coats to the veterans. However, the victim testified that Lawrence told him that they were not actually going to deliver boxes, but instead going to his apartment. While at the apartment, Lawrence engaged in sexual touching of the victim's thigh. This touching occurred after Lawrence described his sexual fetishes to the victim, stating that he has a fetish for children and enjoys taking pictures of them. Lawrence also requested that the victim pull up his shirt and lower his pants so he could photograph the victim's genital area. Lawrence also offered to massage the victim in his bedroom on his bed.

{¶56} The victim's testimony reflects that Lawrence used deception to engage in sexual activity and sexual contact with the victim. Lawrence consistently argues that he did not do anything without the victim's consent and that he did not actually do anything sexual with the victim. However, the victim did not consent to being touched on his thigh by Lawrence. "R.C. 2905.01(A)(4) is complete when a person removes another or restrains the other's liberty for the purpose of engaging in sexual activity." *State v. Brown*, 2013-Ohio-1982, ¶ 24 (8th Dist.), citing *State v. Fischer*, 1999 Ohio App. LEXIS 5568 (8th Dist. 1999). "R.C. 2905.01(A)(4) requires only that the restraint or removal occur for the purpose of nonconsensual sexual activity, not that sexual activity actually take place." *Id.*,

citing *id.*, citing *State v. Powell*, 49 Ohio St.3d 255 (1990). Thus, there is sufficient evidence to convict Lawrence of R.C. 2905.01(A)(4).

{¶57} Fourth, Lawrence argues that the evidence is not sufficient to convict him of attempted illegal use of minor in nudity-oriented material or performance, in violation of R.C. 2923.02 and 2907.323(A)(1). R.C. 2923.02(A) states: "No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense." R.C. 2907.323(A)(1) states:

> (A) No person shall do any of the following:
>
> > (1) Photograph any minor or impaired person who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor or impaired person in a state of nudity, unless both of the following apply:
> >
> > > (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;
> >
> > > (b) The minor's or impaired person's parents, guardian, or custodian consents in writing to the photographing of the minor or impaired person, to the use of the minor or impaired person in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

{¶58} According to the victim's testimony, Lawrence asked the victim if he wanted to take pictures and offered to pay the victim. The victim responded in the negative because he did not feel comfortable. Lawrence told the victim that he would have to lift his shirt up and pull his pants down below his knees, exposing his genitals, for the pictures.

{¶59} Lawrence attempted to take photos of the minor victim in a state of nudity. Nudity is defined in R.C. 2907.01(H), in part, as "the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering . . . or of covered male genitals in a discernibly turgid state. . . ." Lawrence requested that the victim pull up his shirt and pull down his pants to his knees to reveal his genital area. In Lawrence's brief, he stated that he allegedly asked the victim if he wanted to pose nude for a photo in exchange for money. However, he argues that because he did not continue after the victim's response, he renounced any criminal intent. His arguments are misplaced. The victim is a minor. Attempting to take a nude photo of a minor is a violation of R.C. 2923.02 and 2907.323(A)(1).

{¶60} Therefore, Lawrence's second assignment of error is overruled.

IV. Manifest Weight of the Evidence

A. Standard of Review

{¶61} A manifest weight challenge to a conviction asserts that the State has not met its burden of persuasion in obtaining the conviction. *Thompkins*, 78 Ohio St.3d at 390. A manifest weight challenge raises factual issues, and we review the challenge as follows:

> The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

Id. at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Townsend*, 2019-Ohio-544, ¶ 20 (8th Dist.).

{¶62} Inconsistencies or contradictions in a witness's testimony do not entitle a defendant to a reversal of a trial. *State v. Solomon*, 2021-Ohio-940, ¶ 62 (8th Dist.), citing *State v. Nitsche*, 2016-Ohio-3170, ¶ 45 (8th Dist.). Further, in *State v. R.I.H.*, 2019-Ohio-2189, ¶ 38, 41 (10th Dist.), the Tenth District noted that portions of a victim's trial testimony that were inconsistent with prior statements to police did not amount to a finding of a manifest miscarriage of justice where "the jury was aware of such inconsistency and was able to consider this when weighing the credibility of the testimony."

B. Law and Analysis

{¶63} In Lawrence's third assignment of error, he argues that his convictions were against the manifest weight of the evidence. Lawrence raises these arguments with respect to the proper venue and his convictions. He makes identical arguments that he addressed in the second assignment of error.

{¶64} The victim testified that the events took place in Lawrence's apartment. Lawrence's apartment is in Cleveland, and the victim had been there previously with his grandfather. Lawrence initially told the victim's mother that he and the victim were going to take coats to the veterans. Instead, Lawrence took the victim to his apartment where he asked him to take nude photos and touched his thigh.

{¶65} "In a weight of the evidence challenge the trier of fact 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.'" *State v. Stratford*, 2022-Ohio-1497, ¶ 24 (8th Dist.), citing *State v. McCall*, 2017-Ohio-296, ¶ 14 (8th Dist.), quoting *State v. Wilson*, 2007-Ohio-2202, ¶ 24. The jury was in the best position to view and weigh the victim's credibility. The jury found the testimony of the victim to be credible.

{¶66} The record does not demonstrate that the trial court or the jury lost its way and created such a manifest miscarriage of justice that the conviction must be reversed, and a new trial ordered. The discretionary power to grant a new trial

should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction, and this is not an exceptional case.

{¶67} Therefore, Lawrence's third assignment of error is overruled

V. Ineffective Assistance of Counsel

A. Standard of Review

{¶68} "In order to establish a claim of ineffective assistance of appellate counsel, the applicant must demonstrate that counsel's performance was deficient, and that the deficient performance prejudiced the defense." *State v. Hubbard*, 2024-Ohio-2161, ¶ 13 (8th Dist.), citing *Strickland*, 466 U.S. 668; *Bradley*, 42 Ohio St.3d 136; and *State v. Reed*, 1996-Ohio-21.

{¶69} In *Strickland*, the United States Supreme Court ruled that judicial scrutiny of an attorney's work must be highly deferential. The Court further discussed that a defendant could be tempted to second-guess his lawyer after a conviction. Then it could be easy for an appellate court, examining an unsuccessful defense in hindsight, to render a conclusion that a particular act or omission was deficient. Therefore, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland* at 689.

{¶70} Even if a defendant establishes that an error by his trial attorney was professionally unreasonable under all the circumstances of the case, the defendant

must further establish prejudice: "but for the unreasonable error there is a reasonable probability that the results of the proceeding would have been different." *Hubbard*, at ¶ 16. Thus, "a reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Therefore, "a court need not determine whether counsel's performance was deficient before examining prejudice suffered by the defendant as a result of alleged deficiencies." *Id.*

B. Law and Analysis

{¶71} In Lawrence's fourth assignment of error, he argued that his trial counsel was ineffective for the following reasons: (1) counsel's failure to request a safe-place-unharmed jury instruction; (2) counsel's failure to assert that Lawrence abandoned any attempt as a defense in Count three; and (3) counsel's stipulation to and failure to object to the introduction at trial and reading into the record, the transcript of Lawrence's prior statements made at a federal parole hearing.

{¶72} We previously addressed Lawrence's first issue with the failure to request a jury instruction and determined that it had no merit. We now address his other two issues.

{¶73} Lawrence contends that his trial counsel was ineffective for failing to assert that Lawrence abandoned committing a crime. To show that his trial counsel was ineffective, Lawrence was required to prove that his counsel's

performance fell below an objective standard of reasonable representation and that the deficiency prejudiced him. *See Hubbard,* 2024-Ohio-2161, at ¶ 17. *See, e.g., Bradley*, 42 Ohio St.3d 136, paragraph two of the syllabus, citing *Strickland*, 466 U.S. at 687-688.

{¶74} "In *State v. Aponte*, 2008-Ohio-1264, ¶ 12 (8th Dist.), we stated 'R.C. 2923.02(D) expressly makes attempt an affirmative defense, at least when the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.'" *In re M.P.*, 2010-Ohio-2216, ¶ 18 (8th Dist.). "The defendant bears the burden of proving an affirmative defense by a preponderance of the evidence. R.C. 2901.05." *Id.*, quoting *Aponte* at ¶ 12.

> Perhaps a more prudent way to explain this concept is to say that R.C. 2923.02(D) provides for the affirmative defense of abandonment as the statute states that "[i]t is an affirmative defense to a charge under this section that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose."

Id., quoting *id.*

{¶75} "This court has held that 'when an offender forms an intent to perform an act and then takes a substantial step toward the act, the offender may not argue that he has abandoned the act as an affirmative defense.'" *State v. Norton*, 2016-Ohio-1123, ¶ 41 (8th Dist.), citing *State v. Bowyer*, 2007-Ohio-719, ¶ 15 (8th Dist.). "Further, in order to prove abandonment/termination, a defendant is required to

show that he 'manifested a complete and voluntary renunciation of his criminal purpose.'" *State v. Rudasill*, 2021-Ohio-45, ¶ 53 (10th Dist.), citing *State v. Hernandez-Martinez*, 2012-Ohio-3754, ¶ 40 (12th Dist.).

{¶76} The facts do not support Lawrence's contention that he abandoned any criminal intent. "[T]he abandonment must be 'complete' and 'voluntary' in order to exculpate a defendant. Where one abandons an attempted crime because he fears detection or realizes that he cannot complete the crime, the 'abandonment' is neither 'complete' nor 'voluntary.'" *State v. Kiser*, 2022-Ohio-2012, ¶ 30 (5th Dist.), citing *State v. Woods*, 48 Ohio St.2d 127, 133 (1976). The fact that he did not use force or coercion to override the victim's will or objections to being photographed in the nude does not establish that Lawrence manifested a complete and voluntary renunciation of his criminal purpose. Lawrence simply could not complete the crime.

{¶77} We find that this affirmative defense was not applicable to the facts of this case. Therefore, we cannot say that counsel was ineffective for failing to request a jury instruction concerning this theory.

{¶78} Third, Lawrence argues that his trial counsel's representation was ineffective because counsel stipulated to and failed to object to the introduction at trial and reading into the record, the transcript of Lawrence's prior statements made at a prior federal parole hearing. To show that his trial counsel was ineffective, Lawrence is required to prove that his counsel's performance fell below

an objective standard of reasonable representation and that the deficiency prejudiced him. *See Hubbard,* 2024-Ohio-2161 at ¶ 17. *See, e.g., Bradley*, 42 Ohio St.3d 136, paragraph two of the syllabus, citing *Strickland*, 466 U.S. at 687-688.

{¶79} "Questionable trial strategies and tactics, however, do not rise to the level of ineffective assistance of counsel." *Mohamed*, 2017-Ohio-7468 at ¶ 18, citing *State v. Clayton*, 62 Ohio St.2d 45, 49 (1980). "'To justify a finding of ineffective assistance of counsel, the appellant must overcome a strong presumption that, under the circumstances, the challenged action might be considered sound trial strategy.'" *Id.*, quoting *State v. Carter*, 72 Ohio St.3d 545, 558 (1995), citing *Strickland* at 689.

{¶80} It could be argued that it was trial counsel's strategy to have the statement on the record to demonstrate Lawrence's remorse or intent. However, we cannot infer counsel's intent. Lawrence has the burden of demonstrating that counsel's performance was deficient and the deficiency prejudiced him. Lawrence has not demonstrated anything from the record that supports his contention.

{¶81} Therefore, Lawrence's fourth assignment of error is overruled.

VI. Sentencing Advisement

{¶82} In Lawrence's fifth assignment of error, he argues that the trial court erred by not giving him the full advisement of his indefinite sentence. When a trial

court imposes a non-life felony indefinite sentence pursuant to the Reagan Tokes Law, R.C. 2929.19(B)(2)(c) requires that the trial court notify the offender

> (i) That it is rebuttably presumed that the offender will be released from service of the sentence on the expiration of the minimum prison term imposed as part of the sentence or on the offender's presumptive earned early release date, as defined in section 2967.271 of the Revised Code, whichever is earlier;
>
> (ii) That the department of rehabilitation and correction may rebut the presumption described in division (B)(2)(c)(i) of this section if, at a hearing held under section 2967.271 of the Revised Code, the department makes specified determinations regarding the offender's conduct while confined, the offender's rehabilitation, the offender's threat to society, the offender's restrictive housing, if any, while confined, and the offender's security classification;
>
> (iii) That if, as described in division (B)(2)(c)(ii) of this section, the department at the hearing makes the specified determinations and rebuts the presumption, the department may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time the department determines to be reasonable, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (iv) That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (v) That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

State v. Laws, 2023-Ohio-77, ¶ 19 (8th Dist.).

{¶83} At sentencing, the trial court stated:

> I have considered all of the information that's been presented today, I've reviewed the purposes and principles of sentencing pursuant to

> Revised Code 2929.11; the serious and recidivism factors relevant to this case and yourself pursuant to Revised Code 2929.12; and the need for deterrence, incapacitation, rehabilitation, and restitution.
>
> Counts one and two merge for purposes of sentencing. The State of Ohio has elected to proceed on count one. The sentence for count one is an indefinite sentence.
>
> So, Mr. Lawrence, you'll have a sentence that — a prison term that has both a minimum and maximum term. I went over all of this with you during final pretrials that this Court held.
>
> On Count one, the minimum sentence is five years, so your indefinite sentence is five to seven and a half years in prison. It is presumed that you will be released when your minimum term ends unless the Ohio Department of Rehabilitations and Corrections determines that you must remain in prison for bad conduct. This decision is not made by me. It is made by the Ohio Department of Rehabilitations and Corrections.
>
> If you are not released when your minimum term ends, you will serve an additional specified period of time and be given a new release date. You will be released on that date unless you are again denied release for bad conduct. This process will repeat until you are either released or until you finish your maximum term.

Tr. 534-535.

{¶84} While the court must give these notices at the time of sentencing, no specific language is required. *Laws*, at ¶ 20, citing *State v. Gates*, 2022-Ohio-1666, ¶ 25 (8th Dist.). At sentencing, the trial court complied with R.C. 2929.19(B)(2)(c). Tr. 534-535. Additionally, the journal entry reflects that the correct advisements were given, stating, "[T]he court has notified the offender that pursuant to R.C. 2929.19(B)(2)(c). . . ." Journal Entry 165532108 (Nov. 21, 2023). "It is axiomatic that the trial court speaks through its journal entry." *State v. Beaver*, 2018-Ohio-

2840, ¶ 4 (8th Dist.), citing *State v. Brooke*, 2007-Ohio-1533, ¶ 47, citing *Kaine v. Marion Prison Warden*, 88 Ohio St.3d 454, 455 (2000).

{¶85} Therefore, Lawrence's fifth assignment of error is overruled.

{¶86} 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 common pleas court to carry this judgment into execution.

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

_____

ANITA LASTER MAYS, JUDGE

EILEEN T. GALLAGHER, J., CONCURS;
KATHLEEN ANN KEOUGH, A.J., CONCURS IN JUDGMENT ONLY IN PART AND DISSENTS IN PART (WITH SEPARATE OPINION)

KATHLEEN ANN KEOUGH, A.J., CONCURRING IN JUDGMENT ONLY IN PART AND DISSENTING IN PART:

{¶87} I concur with the majority's judgment overruling Lawrence's assignments of error that challenge his convictions. I agree with the majority in its conclusion that the trial court did not commit plain error in instructing the jury, Lawrence was not deprived of effective assistance of trial counsel, and that

Lawrence's convictions are supported by both sufficient and the weight of the evidence. I respectfully dissent, however, from the majority's conclusion that the trial court properly notified Lawrence of all the advisements found in R.C. 2929.19(B)(2)(c) prior to imposing sentence pursuant to the Reagan Tokes Law.

{¶88} I agree with the majority that no specific language is required, but a reviewing court must be able to discern from the record that the trial court conveyed the information required by these statutory notice provisions. *See Laws*, 2023-Ohio-77 (8th Dist.); *State v. Bradley*, 2022-Ohio-2954 (8th Dist.); *State v. Gates*, 2022-Ohio-1666 (8th Dist.) (all finding that although the R.C. 2929.19(B)(2)(c) advisements do not need to be given verbatim, this court could not discern from the record that the trial court provided the necessary advisements at sentencing). *Compare State v. Pascale,* 2023-Ohio-2877 (8th Dist.) (although not given verbatim at the sentencing hearing, this court could glean from the record that the trial court notified the defendant of the R.C. 2929.19(B)(2)(c) advisements).

{¶89} I would find that this case is not a situation where this court can discern from the record that the advisements were given because the trial court did not completely notify Lawrence during the sentencing hearing of the "specified determinations" in R.C. 2929.196(B)(2)(ii). My review of the record reveals that the trial court only advised Lawrence, "It is presumed that you will be released when your minimum term ends unless the Ohio Department of Rehabilitations and Corrections determines that you must remain in prison for bad conduct. . . . You

will be released on that date unless you are again denied release for bad conduct." (Tr. 534-535.)

{¶90} "Bad conduct," however is just one of the "specified determinations" that the ODRC is required to make in determining whether it will continue an offender's incarceration after the expiration of the minimum term. *See* R.C. 2929.19(B)(2)(c)(ii)-(iii). The other determinations include the offender's (1) rehabilitation, (2) threat to society, (3) restrictive housing, if any, while confined, and (4) security classification. Because the trial court did not notify Lawrence of all of the factors that ODRC will consider when determining whether to extend his prison sentence beyond the minimum, I would find that the trial court committed reversible error.

{¶91} Accordingly, I would reverse the sentence on Count 1 and remand the case to the trial court for the sole purpose of providing Lawrence with the notifications required by R.C. 2929.19(B)(2)(c).