

OHIO COURT OF APPEALS, THIRD APPELLATE DISTRICT

State v. Upkins

2026-Ohio-770 · No. 17-24-12 · Decided March 9, 2026

SUMMARY

The Ohio Third District Court of Appeals affirmed Lamone E. Upkins's convictions and aggregate 60-month prison sentence for five drug-trafficking offenses. Upkins argued that the convictions were against the manifest weight of the evidence, that prosecutorial misconduct denied him a fair trial, and that trial counsel was ineffective for failing to object. The court overruled all assignments of error.

CASE DETAILS

COURT	Ohio Court of Appeals, Third Appellate District
WRITING FOR THE COURT	Mark C. Miller; John R. Willamowski; Juergen A. Waldick
JURISDICTION	Ohio Court of Appeals, Third Appellate District, Shelby County
DECIDED	March 9, 2026
DOCKET	17-24-12
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his convictions and aggregate five-year consecutive sentence from the Shelby County Court of Common Pleas, arguing that the convictions were against the manifest weight of the evidence, that prosecutorial misconduct denied him a fair trial, and that trial counsel was ineffective for failing to object.
STANDARD OF REVIEW	Manifest-weight claims require the appellate court to review the entire record, weigh the evidence and reasonable inferences, consider witness credibility, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. Credibility determinations remain primarily for the trier of fact. Unobjected-to prosecutorial-misconduct claims are reviewed for plain error. Ineffective-assistance claims are governed by the deficient-performance and prejudice requirements of Strickland v. Washington.
PRECEDENTIAL VALUE	published precedential Ohio Court of Appeals decision
PARTIES	Lamone E. Upkins v. State of Ohio

TOPICS

criminal procedure

evidence

appellate procedure

prosecutorial misconduct

ineffective assistance

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether Upkins's five drug-trafficking convictions were against the manifest weight of the evidence because of alleged credibility problems with the confidential informant and poor-quality recordings.
2. Whether alleged prosecutorial misconduct during opening statement and closing argument constituted plain error that denied Upkins a fair trial and due process.
3. Whether trial counsel rendered ineffective assistance by failing to object to the prosecutor's allegedly improper statements.

HOLDINGS

1. The convictions were not against the manifest weight of the evidence. The jury was entitled to credit the confidential informant and law-enforcement witnesses, and the recordings and forensic evidence corroborated the State's case.
2. Even assuming that the prosecutor's comments referring to jurors as victims, characterizing the defense as throwing red herrings, and referring to Upkins's prior drug trafficking were improper, they did not constitute reversible plain error because Upkins failed to show that the outcome would have been different absent the comments.
3. Upkins did not establish ineffective assistance of counsel because he failed to demonstrate prejudice. There was no reasonable probability that an objection or limiting instruction would have changed the trial outcome.

KEY QUOTATIONS

"Only in exceptional cases, where the evidence 'weighs heavily against the conviction,' should an appellate court overturn the trial court's judgment." (¶ 8)

"Thus, even if we assume there was error in allowing the prosecutor's statements, we find beyond a reasonable doubt that, absent the prosecutor's comments, the jury would still have found Upkins guilty." (¶ 41)

"The failure to make either the deficiency or prejudice showing defeats a claim of ineffective assistance of counsel." (¶ 47)

FACTUAL BACKGROUND

In August and September 2021, a confidential informant conducted five controlled drug buys involving Upkins. Law-enforcement officers searched the informant and his vehicle before and after the buys, equipped him with recording equipment, observed the transactions when practicable, and submitted the purchased substances for forensic testing. The substances were identified as cocaine, methamphetamine, and buprenorphine. Upkins

testified that he knew the informant as a person who sold tools and denied selling him drugs, but the jury credited the State's evidence.

PROCEDURAL HISTORY

A Shelby County grand jury indicted Upkins on five drug-trafficking counts and one witness-intimidation count. The witness-intimidation count was dismissed without prejudice before trial. Following a jury trial, Upkins was convicted on the five drug-trafficking counts, with school-zone specifications found on two counts, and was sentenced to twelve months on each count, consecutively, for an aggregate sixty-month term. The Court of Appeals affirmed and remanded only for execution of the judgment for appellate costs.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The cause was remanded to the trial court solely for execution of the judgment for appellate costs and issuance of the mandate pursuant to App.R. 27.

CASES CITED

- State v. Thompkins, 78 Ohio St.3d 380, 387 (1997)
- State v. Martin, 20 Ohio App.3d 172, 175 (1st Dist. 1983)
- State v. DeHass, 10 Ohio St.2d 230, 231 (1967)
- State v. Haller, 2012-Ohio-5233, ¶ 9 (3d Dist.)
- State v. Hunter, 2011-Ohio-6524, ¶ 129
- State v. Martinez, 2013-Ohio-3189, ¶ 16 (9th Dist.)
- State v. Cox, 2022-Ohio-571, ¶ 20 (3d Dist.)
- State v. Banks, 2011-Ohio-5671, ¶ 13 (8th Dist.)
- State v. Brentley, 2023-Ohio-2530, ¶ 33 (3d Dist.)
- State v. Wilson, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 24
- Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80-81 (1984)
- State v. Waller, 2023-Ohio-493, ¶ 20 (3d Dist.)
- State v. Smith, 14 Ohio St.3d 13, 14-15 (1984)
- State v. Nicholson, 2024-Ohio-604, ¶¶ 266, 281-282
- State v. Knuff, 2024-Ohio-902, ¶¶ 238, 250
- In re J.G., 2025-Ohio-1933, ¶ 48 (8th Dist.)
- State v. McKelton, 2015-Ohio-4228, ¶ 13 (12th Dist.)
- State v. Gray, 2012-Ohio-4769, ¶ 56 (12th Dist.)
- State v. Cass, 2024-Ohio-2614, ¶ 57 (3d Dist.)
- State v. Morgan, 2017-Ohio-7565, ¶ 35

- State v. Ballew, 76 Ohio St.3d 244, 254-255 (1996)
- State v. White, 82 Ohio St.3d 16, 22 (1998)
- State v. Noling, 98 Ohio St.3d 44, 2002-Ohio-7044, ¶ 62
- Maggio v. Cleveland, 151 Ohio St. 136, paragraph two of the syllabus (1949)
- State v. Stevens, 2016-Ohio-446, ¶¶ 71, 75 (3d Dist.)
- State v. Moritz, 63 Ohio St.2d 150, 157 (1980)
- State v. Rasawehr, 2020-Ohio-429, ¶ 13 (3d Dist.)
- State v. Encarnacion, 2017-Ohio-5530, ¶ 10 (10th Dist.)
- State v. Norales-Martinez, 2018-Ohio-4356, ¶ 32 (6th Dist.)
- State v. Oviedo, 6th Dist. Lucas No. L-95-287, 1997 Ohio App. LEXIS 3607, *4 (Aug. 15, 1997)
- State v. Keenan, 66 Ohio St.3d 402, 410 (1993)
- State v. Caudill, 2025-Ohio-787, ¶ 44 (3d Dist.)
- State v. Yelton, 2025-Ohio-2391, ¶ 48 (3d Dist.)
- State v. Evick, 2020-Ohio-3072, ¶ 45 (12th Dist.)
- State v. Frazier, 61 Ohio St.3d 247, 255 (1991)
- State v. Bradley, 42 Ohio St.3d 136, 141-142 (1989)
- State v. Artis, 2019-Ohio-2070, ¶ 33 (3d Dist.)
- State v. Frye, 2015-Ohio-3012, ¶ 11 (10th Dist.)
- State v. Stinebaugh, 2024-Ohio-2677, ¶ 65 (3d Dist.)

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