

1 The State of Ohio, Appellee, v. Shoemaker, Appellant.

2 [Cite as *State v. Shoemaker* (1996), \_\_\_\_\_ Ohio St.3d \_\_\_\_\_.]

3 *Criminal law -- Appeal -- Only courts of appeals may overturn trial*  
4 *court judgments on the ground that the verdict was against*  
5 *the manifest weight of the evidence -- Limits of Supreme*  
6 *Court review.*

7 (No. 95-1657--Submitted December 5, 1995--Decided March 1,  
8 1996.)

9 Appeal from the Court of Appeals for Clark County, No. 2913.

10 Appellant, John E. Shoemaker, was convicted in 1992 of involuntary  
11 manslaughter with a firearm specification. The Court of Appeals for Clark  
12 County affirmed his conviction. *State v. Shoemaker* (Dec. 29, 1992), Clark  
13 App. No. 2913, unreported. Appellant later filed in the court of appeals an  
14 App.R. 26(B) application to reopen his appeal, alleging that his appellate  
15 counsel had rendered ineffective assistance by failing to raise five issues.  
16 The court of appeals granted the application with respect to appellant's  
17 claim that his involuntary manslaughter conviction "was against the  
18 manifest weight of the evidence in that there was insufficient evidence of

1 the commission of an underlying felony.” The court denied the application  
2 as to the remaining four issues.

3 Appellant was assigned new counsel and given the opportunity to  
4 present the weight-of-the-evidence issue. However, the court of appeals  
5 ultimately rejected appellant’s claim and reaffirmed his conviction. This  
6 appeal followed.

7 *Stephen A. Schumaker*, Clark County Prosecuting Attorney, for  
8 appellee.

9 *John E. Shoemaker, pro se.*

10 *Per Curiam.* Appellant presents six propositions of law. We overrule  
11 all six and affirm the court of appeals’ judgment.

12 Appellant was convicted of involuntary manslaughter based on the  
13 underlying crime of felonious assault. In his fifth proposition of law, he  
14 claims that the felonious assault finding was against the manifest weight of  
15 the evidence and that his involuntary manslaughter conviction therefore  
16 cannot stand.

17 However, the court of appeals unanimously ruled that the conviction  
18 was not against the manifest weight of the evidence. We cannot disturb that

1 ruling. Only courts of appeals may overturn trial court judgments on the  
2 grounds urged here, *i.e.*, that the verdict was against the manifest weight of  
3 the evidence. See *State v. Cooley* (1989), 46 Ohio St.3d 20, 25-26, 544  
4 N.E.2d 895, 905-906.<sup>1</sup> Our review “is limited to a determination of whether  
5 there was evidence presented ‘which, if believed, would convince the  
6 average mind of the defendant’s guilt beyond a reasonable doubt.’” *State v.*  
7 *Eley* (1978), 56 Ohio St.2d 169, 172, 10 O.O.3d 340, 341, 383 N.E.2d 132,  
8 134.

9 In his remaining propositions of law, appellant raises issues that the  
10 court of appeals did not grant him leave to present in the reopened appeal.  
11 As the court of appeals did not reach the merits of these issues, the sole  
12 issue before us is whether that court properly excluded them from its order  
13 reopening the appeal.

14 In appellant’s first proposition of law, he argues that the jury’s  
15 rejection of his self-defense claim was against the manifest weight of the  
16 evidence. However, appellant apparently failed to include the self-defense  
17 issue in his App.R. 26(B) application to reopen the appeal and the court of  
18 appeals did not address it. We find no error here.

