

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Appellee

v.

JOE PHELPS JR.

Appellant

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C.A. No. 30765

Trial Court Case No. 2025 CR 01729

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is affirmed in part, reversed in part, vacated in part, and the matter is remanded for further proceedings consistent with the opinion.

Costs to be paid as follows: 50% by the appellant and 50% by the appellee.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



CHRISTOPHER B. EPLEY, JUDGE

TUCKER, J., and HANSEMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30765

DAVID R. MILES, Attorney for Appellant
MICHAEL P. ALLEN, Attorney for Appellee

EPLEY, J.

{¶ 1} Joe Phelps Jr. appeals from his convictions in the Montgomery County Court of Common Pleas for attempted murder, aggravated burglary, aggravated robbery, felonious assault, and having weapons while under disability, plus attendant firearm and repeat violent offender specifications. He claims that several of his convictions were against the manifest weight of the evidence because he had acted in self-defense, that the trial court erred when it held a jury waiver hearing after the jury trial had concluded, and that the court failed to give certain advisements required by R.C. 2903.42(A)(1)(a) regarding the violent offender database. For the following reasons, the trial court’s judgment is affirmed in part, reversed in part, and vacated in part, and the matter is remanded for further proceedings consistent with this opinion.

I. Facts and Procedural History

{¶ 2} At approximately 1:00 p.m. on June 28, 2025, A.A. was shot multiple times in his home on Middlehurst Lane in Dayton. Almost an hour later, a postal service mail carrier heard A.A.’s call for help, called 911, and provided emergency aid. A.A. told the mail carrier that he had been shot by “Old School Joe.” A.A. later told the police that Phelps had shot him. During the police investigation, officers determined that a bullet had gone through the west wall of A.A.’s residence and into the east wall of the neighboring house, where D.S. resided. D.S.’s window, window blinds, and kitchen cabinet were damaged by the bullet.

{¶ 3} On July 11, 2025, Phelps was indicted on aggravated robbery (serious physical harm), felonious assault (serious physical harm), and felonious assault (deadly weapon); each offense included a three-year firearm specification. In September 2025, Phelps was indicted on four additional charges: attempted murder, aggravated burglary, improperly discharging a firearm at or into a habitation, and having weapons while under disability; all but the weapons-under-disability charge included a three-year firearm specification and a repeat violent offender specification. Phelps pled not guilty to both indictments and filed notices of his intent to argue self-defense at trial. A jury trial was scheduled for December 15, 2025.

{¶ 4} On December 1, 2025, the day before the final pretrial conference, defense counsel filed a motion in limine seeking to preclude the State from eliciting any evidence at trial regarding Phelps's prior conviction for murder in Montgomery C.P. No. 79-CR-1223. The motion acknowledged that "proof of the prior conviction is required for the Having Weapons Under Disability charges as well as the Repeat Violent Offender Specification." It indicated that Phelps was "prepared to waive a jury as to that count and as to that specification and stipulate to the prior conviction." Several days later, counsel filed an amended motion to correct a typographical error regarding the date that Phelps's parole had ended. The State opposed the motion, asserting that the prior conviction was probative as to Phelps's self-defense claim.

{¶ 5} Phelps did not waive his right to a jury trial on the charge of having weapons while under disability prior to the commencement of the jury trial, nor did the trial court rule on the motion in limine prior to trial.

{¶ 6} Phelps's trial began on December 15, as scheduled, and the jury was empaneled that day. Before opening statements and outside the presence of the jury, the

trial court preliminarily granted the motion in limine because Phelps had been released from parole for more than ten years. The court indicated that the ruling could change if Phelps testified and opened the door to its admissibility. During this discussion, the prosecutor told the court that there was a stipulation regarding the prior conviction for the repeat violent offender specification and that it would be provided to the court.

{¶ 7} During the jury trial, the charge of having weapons while under disability and Phelps's possible waiver of a jury trial on that offense went unmentioned. There was no discussion about the offense outside the presence of the jury, and the jury was neither told about nor instructed on that charge.

{¶ 8} During the presentation of evidence, the State offered the testimony of A.A., the postal service mail carrier, a responding police officer, D.S., three evidence technicians, two detectives, and the surgeon who operated on A.A., as well as numerous exhibits. Phelps testified on his own behalf and asserted that he had acted in self-defense.

{¶ 9} After both sides had rested, the court instructed the jury on attempted murder, aggravated burglary, aggravated robbery, improperly discharging a firearm at or into a habitation, both counts of felonious assault, and the attached firearm specifications. The jury also received instructions regarding self-defense. After deliberating, the jury acquitted Phelps of improperly discharging a firearm at or into a habitation but found him guilty of the remaining charges and firearm specifications.

{¶ 10} Immediately after the jury was discharged, the court asked the parties if there was anything to address before adjourning for the day. The State mentioned that there were repeat violent offender specifications attached to several charges and that there was a stipulation to Phelps's prior conviction, which the State had marked as an exhibit to provide

to the court. The prosecutor stated, “That along with the testimony would be everything the State would submit for that.” The trial court and counsel then had the following exchange:

THE COURT: Was there another – was it just the RVO specs, or was there one more?

[DEFENSE COUNSEL]: It was having weapons under disability.

THE COURT: Right. Did we ever do a jury waiver on that?

[DEFENSE COUNSEL]: I don’t think you did.

THE COURT: I don’t think so either. I think we need to still do that. Okay.

[DEFENSE COUNSEL]: Do that after the trial?

THE COURT: Well, I mean, you guys talked about it. I mean, that was the plan.

[DEFENSE COUNSEL]: It was the plan. I agree.

THE COURT: Yeah. Okay. So we need to set a date for these. . . .

. . .

THE COURT: Okay. And then we need to do the jury waiver on the weapons under disability part. And are you—would you be submitting additional evidence on that charge as well?

[DEFENSE COUNSEL]: No.

THE COURT: Okay. Okay. So we can—we can quickly take care of that, then, tomorrow. . . .

[PROSECUTOR]: Sure.

THE COURT: Okay?

[DEFENSE COUNSEL]: I would just, for the record, I guess, object to him waiving a jury after we've already had the trial. I think we should have done that before we had the trial.

THE COURT: I hear you. I think there was an agreement amongst everyone that the Court was going to be, obviously, trying the RVO specs, because that's what we have to do, and that the weapons under disability would be done after, so—

[DEFENSE COUNSEL]: I will let that—

THE COURT: I mean, yes, typically that is done ahead of time. And we all missed it in this, so I guess, you all let me know your thoughts on that. But I plan to go forward to go over the jury waiver on that, since that was bifurcated off of the other charges that were presented to the jury. So let me know tomorrow—

[DEFENSE COUNSEL]: Okay.

THE COURT: —on that. Okay? All right.

Tr. 484-487.

{¶ 11} When court reconvened the following morning, the trial court stated that it had done research on the jury waiver issue and that “it is okay for us to do that now.” The court told Phelps that “there was a decision that was made for the weapons under disability charge to be tried to the Court.” It explained that he had his jury trial, “but your attorneys opted to have the having weapons under disability tried to the Court so that the jury didn’t hear about your prior conviction. . . . And so in order for the Court to make a decision on the having weapons under disability charge, you have to waive your right to a jury trial on that charge.” Phelps said okay and agreed that was what he wanted to do.

{¶ 12} The court proceeded to notify Phelps of his right to a jury trial on having weapons under disability. Defense counsel did not renew her objection. Instead, she reiterated to Phelps that he had a right to a jury trial “like we did yesterday” but told him that waiving the jury was “the best thing to do.” After Phelps stated that he was willing to waive a jury trial on having weapons while under disability, the court found that his waiver was made knowingly, intelligently, and voluntarily. Phelps and the court signed a jury waiver form.

{¶ 13} After the waiver form was signed, the State presented written stipulations (State’s Ex. 103), including a stipulation to Phelps’s prior convictions for aggravated murder and aggravated robbery in Montgomery C.P. No. 1997 CR 1223, as well as a copy of the judgment entry in the prior case (State’s Ex. 104). The court found Phelps guilty of having weapons while under disability and the two repeat violent offender specifications. The jury waiver was filed shortly after court adjourned.

{¶ 14} A sentencing hearing was held on January 22, 2026. After merging two firearm specifications and the two repeat violent offender specifications, the trial court imposed an aggregate sentence of a mandatory minimum term of 33 years to a maximum term of 38½ years in prison.

{¶ 15} Phelps appeals from his convictions, raising three assignments of error.

II. Manifest Weight of the Evidence and Self-Defense

{¶ 16} In his first assignment of error, Phelps contends that his convictions for attempted murder, aggravated burglary, aggravated robbery, and felonious assault were against the manifest weight of the evidence. He argues that the jury lost its way when it rejected his claim of self-defense.

{¶ 17} “A weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more

believable or persuasive.” *State v. Wilson*, 2009-Ohio-525, ¶ 12 (2d Dist.). “When reviewing an argument challenging the weight of the evidence, an appellate court “must defer to the fact-finder’s witness-credibility determinations” and may not substitute its view for that of the trier of fact. *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 38. Rather, we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 1997-Ohio-52, ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶ 18} “In 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, ¶ 21. “Mere inconsistencies” are insufficient to overcome the deference afforded to the factfinder’s credibility determinations. *Reillo* at ¶ 32. An appellate court may nevertheless conclude that the factfinder lost its way in crediting a witness’s testimony when there is “internally contradictory testimony as to material facts, direct impeachment, or fantastical testimony clearly undermines a witness’s credibility on a cold record.” *Id.* at ¶ 31. A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin* at 175.

{¶ 19} When self-defense is raised, different standards apply depending on whether the defendant responded with deadly or non-deadly force. *State v. Rothermel*, 2014-Ohio-3168, ¶ 12 (2d Dist.). “Deadly force” is defined as “any force that carries a substantial risk that it will proximately result in the death of any person.” R.C. 2901.01(A)(2). The use of a gun constitutes deadly force. *State v. Barker*, 2022-Ohio-3756, ¶ 21 (2d Dist.).

{¶ 20} To warrant an instruction on self-defense, there must be evidence presented by the defendant that (1) he or she was not at fault in creating the violent situation, (2) the defendant had a bona fide belief that he or she was in imminent danger of death or great bodily harm and that the only way to escape was the use of force, and (3) that the defendant did not violate any duty to retreat. *State v. Messenger*, 2022-Ohio-4562, ¶ 14; *State v. Lovett*, 2022-Ohio-1693, ¶ 41 (2d Dist.). A person no longer has a duty to retreat before using force in self-defense “if that person is in a place in which the person lawfully has a right to be.” R.C. 2901.09(B). Accordingly, the law has “remove[d], in most cases, the duty to retreat before using self-defense.” *State v. Degahson*, 2022-Ohio-2972, ¶ 15 (2d Dist.); *State v. Trigg*, 2023-Ohio-3660, ¶ 32 (2d Dist.).

{¶ 21} If the defendant puts forth evidence that he or she acted in self-defense, the prosecution must prove beyond a reasonable doubt that the accused did not use force in self-defense. R.C. 2901.05(B)(1); *Lovett* at ¶ 40. The State’s burden of disproving a defendant’s self-defense claim beyond a reasonable doubt is subject to manifest weight review on appeal. *State v. Knuff*, 2024-Ohio-902, ¶ 208 (a self-defense claim is subject to review for manifest weight, but not sufficiency of the evidence). Manifest-weight review is proper because a defendant claiming self-defense does not seek to negate an element of the crime, but rather to relieve himself or herself from culpability. *State v. Butler*, 2023-Ohio-3504, ¶ 17 (2d Dist.).

{¶ 22} Circumstantial evidence has the same probative value as direct evidence. *State v. Jenks*, 61 Ohio St.3d 259, 272 (1991), citing *State v. Nicely*, 39 Ohio St.3d 147 (1988); *State v. St. John*, 2019-Ohio-650, ¶ 49 (2d Dist.). In some cases, “circumstantial evidence may be more certain, satisfying, and persuasive than direct evidence.” *State v. Jackson*, 57 Ohio St.3d 29, 38 (1991).

{¶ 23} According to the State’s evidence at trial, in June 2025, A.A. and Phelps had known each other for approximately three years. A.A. called him “Old School Joe.” Phelps was buying heroin from A.A., and he would come to A.A.’s home every one or two weeks. Phelps typically called before he came over.

{¶ 24} A.A. testified that at approximately 1:00 p.m. on June 28, 2025, he heard someone knocking on his side door (the one A.A. used as the main entrance) and saw Phelps on the monitor for his home security system. Phelps was “fidgety,” had his hand in his pocket, and had not called first; A.A. testified that “something wasn’t right with him.” A.A. had guns in his home for protection (the police located a gun in A.A.’s bedroom and a second gun in a bedroom that was used for storage), but A.A. answered the door unarmed and allowed Phelps to enter. A.A. locked the door behind Phelps, as he always did.

{¶ 25} Phelps asked for drugs, and A.A. agreed to provide them. A.A. asked Phelps about money that Phelps already owed him, but A.A. had not previously had any problem with Phelps’s paying him. When A.A. turned to get the drugs (about a half-gram to a gram), Phelps “started shooting nonstop.” A.A. denied that he had threatened Phelps, had a weapon in his hands, or had a weapon near him. A.A. adamantly denied that he was going to sexually assault Phelps as a “tax.”

{¶ 26} A.A. fell forward as he was shot in the back. He saw Phelps step over him and take a bag with 40 or 50 grams of heroin (worth a few thousand dollars) from the counter separating the kitchen and living room. Phelps then stepped back over A.A. and left. Phelps’s legs felt paralyzed, and he had injured his hands and wrists when he fell.

{¶ 27} After approximately 50 minutes, A.A. heard his mail carrier outside and called for help. When the mail carrier approached the side door and asked what was going on, A.A. replied that he had been shot.

{¶ 28} The mail carrier entered A.A.'s home and found him lying on his stomach, covered in blood, and wearing black shorts and no shirt. She observed gunshot wounds to his right shoulder, the middle of his back, and the side of his thigh. The mail carrier called 911, grabbed a towel, applied pressure to the wounds, and gave him water. A.A. could not move, and he said that he could not feel his legs. He told the mail carrier that he had been robbed and that "Old School Joe" had done it. The mail carrier did not observe any weapons while she assisted A.A.

{¶ 29} Officer Benjamin Campbell was the first officer to respond. He heard a female voice calling that they were inside and she needed help. Upon entering, the officer saw A.A. lying on his stomach in the hallway between the living area and the kitchen; the mail carrier was holding towels on his back to stop the bleeding. Campbell observed three gunshot wounds. He did not observe any weapons. After medics arrived, A.A. was taken to the hospital, where he underwent surgery. A.A.'s wounds would have been fatal had he not received treatment at the hospital.

{¶ 30} Detective Zachary Williams forensically examined the digital video recording device ("DVR") from A.A.'s home. A.A.'s surveillance videos showed a male arriving on a bicycle and entering the house while holding something in his right pocket. The man left less than a minute later, holding a pistol in his hand; he rode away on his bicycle. Williams continued watching the video and saw the mail carrier and later the police arrive.

{¶ 31} Detective Josh Erwin learned through a neighbor that Phelps was the possible perpetrator. The detective located a photo of Phelps and compared it with the man in the surveillance video. The man on the video resembled Phelps. On July 1, 2025, Erwin spoke with A.A. at the hospital. A.A. initially did not divulge that he was selling drugs to Phelps and that Phelps had a \$100 debt, but he ultimately disclosed it. A.A. told Erwin that Phelps was

the shooter and that he was “100,000 percent” positive. A.A. also identified Phelps as the shooter at trial.

{¶ 32} Phelps testified in his own defense at trial. He stated that he began buying fentanyl after he hurt his back and the pain clinic from which he was receiving treatment closed. He purchased about a gram at a time for \$60 from various drug houses, including A.A.’s home. Phelps went to A.A.’s home about once or twice per month, when closer sources did not have anything. He was aware that A.A. had cameras on the front and side of his home and that “[s]ometimes he [A.A.] comes to the door with a gun.” Phelps had seen A.A. with two guns.

{¶ 33} According to Phelps, on June 28, 2025, he rode his bicycle to A.A.’s home to get drugs. Phelps owed A.A. about \$100, but A.A. had previously been willing to give him drugs when he did not have money. A.A. answered the door with a gun in his hand. After Phelps entered A.A.’s home, A.A. asked him if he had the money he owed. Phelps responded that he did not but would get it to A.A. in a couple of days. A.A. told Phelps, “If you don’t have my money I’m going to put a tax on you.” Sometimes the “tax” was additional money, but that day, A.A. told Phelps that the tax was “keisters,” meaning A.A. was going to try to have sex with him.

{¶ 34} A.A. took a bag of drugs and hit Phelps in the chest with it. Phelps kept the drugs. A.A. then reached for Phelps. Phelps testified that he believed that A.A. was going to rape or kill him. Phelps noticed that A.A. had put his gun on the table. He grabbed A.A.’s gun, ran to the door, and tried to open it, but it was locked. Phelps then “started shooting, because I know he got other guns in the house. So I started shooting. And I shot about four or five times, and then I opened the door and I took off.” Tr. 345. Phelps stated that A.A. was turning away from him, toward the bedrooms, before he began firing.

{¶ 35} Phelps did not contact the police after the shooting. He explained that his cousin's girlfriend had stepped on his phone and he was scared that he would get in trouble. Phelps denied that he had brought a gun to the house, that he had intended to steal drugs or money, and that he had stolen anything. He stated that he had been given three grams of drugs and that he had put them in his pocket with the gun when he left. On his way home, he fell off his bike and lost the gun. He used the drugs upon returning home.

{¶ 36} "Self-defense claims generally involve an evaluation of witness credibility." *State v. Rhoades*, 2025-Ohio-2358, ¶ 16 (2d Dist.). It was the province of the jury, as the trier of fact, to assess the witnesses' credibility and determine whether the State had proven beyond a reasonable doubt that Phelps had committed the charged offenses and had not acted in self-defense. In reaching its verdict, the jury was free to believe all, part, or none of the witnesses' testimony. *State v. Peterson*, 2021-Ohio-3947, ¶ 27 (2d Dist.).

{¶ 37} Upon review of the evidence, we cannot conclude that the jury lost its way when it ostensibly credited the State's witnesses and found that Phelps had not acted in self-defense when he shot A.A. Within a minute, Phelps had entered A.A.'s home, had shot an unarmed man multiple times in the back as he was walking away, and had left with drugs and a gun. Although the door was locked when Phelps first tried to leave and A.A. had other guns in the home, the jury could have reasonably concluded that Phelps created the violent situation and/or that he lacked a bona fide belief that he was in imminent danger when he shot A.A. Moreover, we cannot conclude that A.A.'s testimony regarding what had occurred was internally contradictory as to material facts, was impeached, or was so fantastical that his credibility was clearly undermined. Phelps's convictions for attempted murder, aggravated burglary, aggravated robbery, and felonious assault were not against the manifest weight of the evidence.

{¶ 38} Phelps's first assignment of error is overruled.

III. Jury Waiver for Having Weapons While Under Disability

{¶ 39} In his second assignment of error, Phelps claims that “the trial court erred in failing to follow the provisions of the United States Constitution, the Ohio Revised Code, and the Ohio Rules of Criminal Procedure relating to the voluntary waiver of . . . his right to trial by jury on the having a weapon under disability charge.” He asserts that he could not waive his right to a jury trial on that charge after the jury trial had concluded. We agree.

{¶ 40} With limited exceptions, a criminal defendant enjoys the constitutional right to a jury trial. U.S. Const., amend. VI; Ohio Const., art. I, § 5; R.C. 2945.17. But that right may be waived. *E.g.*, *State v. Bays*, 87 Ohio St.3d 15, 19 (1999). The decision whether to waive a jury trial belongs to the defendant, not defense counsel. *State v. Lawson*, 2021-Ohio-3566, ¶ 82.

{¶ 41} In Ohio, Crim.R. 23 and R.C. 2945.05 govern a felony defendant's waiver of the right to a jury trial. See *State v. White*, 2020-Ohio-5544, ¶ 57 (2d Dist.). Crim.R. 23(A) provides, in pertinent part: “In serious offense cases the defendant *before commencement of the trial* may knowingly, intelligently and voluntarily waive in writing his right to trial by jury. Such waiver may also be made *during trial* with the approval of the court and the consent of the prosecuting attorney.” (Emphasis added.)

{¶ 42} R.C. 2945.05 sets forth the manner in which a defendant may waive this right. *State v. Lomax*, 2007-Ohio-4277, ¶ 6. To be effective, the waiver must be “(1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court.” *Lomax* at ¶ 9; see R.C. 2945.05. Courts must strictly comply with these requirements. *State v. Slaughter*, 2022-Ohio-3946, ¶ 13; *State v. Grier*, 2010-Ohio-5751, ¶ 15 (2d Dist.). Further, “[a] jury waiver must be voluntary, knowing, and intelligent.” *Bays* at 19.

{¶ 43} In this case, Phelps’s jury trial began on December 15, 2025, and the jury was empaneled and sworn the same day. Phelps did not waive his right to a jury trial on the charge of having weapons while under disability either before his jury trial commenced or during his jury trial, as required by Crim.R. 23(A). Defense counsel could not waive this right for Phelps, and nothing in the record suggests that Phelps or defense counsel said or did anything to delay a jury waiver hearing until after the jury trial was completed. To the contrary, as stated by the trial court, the court and the parties simply “missed it.” At oral argument, the State acknowledged that the oversight was not attributable to Phelps.

{¶ 44} Whether Phelps could waive his right to a jury trial on having weapons while under disability after the conclusion of his jury trial depended, in large part, on when his trial for having weapons while under disability began. Jeopardy attaches, precluding subsequent criminal proceedings, when (1) the jury is empaneled and sworn in a jury trial or (2) the judge starts taking evidence in a bench trial. *State v. Soto*, 2019-Ohio-4430, ¶ 16.

{¶ 45} The State proceeded to trial on the weapons-under-disability charge on December 15, 2025, along with the six charges for which the parties intended the jury to be the factfinder. The trial court did not sever the charge of having weapons while under disability from the other charges, as permitted by Crim.R. 14. Although the parties and the trial court apparently discussed that the trial court, not the jury, would be the *factfinder* for the charge of having weapons while under disability, the trial did not schedule a separate trial for that offense, nor is there any suggestion that the parties expected to have a separate trial on having weapons while under disability at a later date.

{¶ 46} Moreover, it is apparent that the State’s evidence at the jury trial was presented, in part, to establish that Phelps had committed the offense of having weapons while under disability. Phelps was charged with having weapons while under disability in

violation of R.C. 2923.13(A)(2), which provides that “[u]nless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance” if they have been convicted of a felony offense of violence. The State’s evidence of Phelps’s conduct on June 28, 2025—which was presented only during the jury trial—demonstrated that he had carried, used, or had a firearm for purposes of R.C. 2923.13(A). Only the evidence related to Phelps’s prior conviction for a felony offense of violence was later (after the jury had been discharged) presented to the court alone.

{¶ 47} Jeopardy attached when the State proceeded to trial on December 15, 2025. Phelps had not waived his right to a jury trial on the charge of having weapons while under disability (or any other) offense before the jury was empaneled and sworn. When the jury trial ended without a jury waiver, the trial court lost the ability to obtain a jury waiver for any offense from Phelps. See Crim.R. 23(A). Consequently, the court should not have held a jury waiver hearing for the charge of having weapons while under disability on December 18, 2025, and the written waiver signed by Phelps at that hearing had no legal effect.

{¶ 48} We further note that although Phelps ostensibly waived his right to a jury trial on having weapons while under disability in writing and in open court on December 18, 2025, the trial court proceeded to accept the State’s two additional exhibits (the stipulation and prior judgment of conviction) and to find him guilty prior to the waiver form’s filing with the clerk. Even if Phelps could have waived his right to a jury trial at that hearing, it would not have been effective until his written waiver had been filed. See R.C. 2945.05; *Lomax*, 2007-Ohio-4277, at ¶ 9.

{¶ 49} Phelps’s second assignment of error is sustained, and his conviction for having weapons while under disability must be vacated. However, our ruling has no effect on

Phelps's aggregate sentence, as his 60-month sentence for having weapons while under disability was ordered to be served concurrently with his lengthy sentence for attempted murder.

IV. Violent Offender Database Notifications

{¶ 50} In his third assignment of error, Phelps claims that the trial court erred in failing to give certain advisements as required by R.C. 2903.41(A)(1)(a). He contends that the court made only “a vague reference to a hearing” and fell short of the statutory requirements.

{¶ 51} “Senate Bill 231, known as Sierah’s Law, established a statewide violent offender database, along with the legal presumption that offenders convicted of certain violent crimes must enroll in the database for a period of 10 years following their release from prison.” *State v. Williams*, 2021-Ohio-1340, ¶ 128 (2d Dist.), citing R.C. 2903.41 through 2903.43. As relevant to Phelps, the term “violent offender” includes a person who is convicted of attempted murder. R.C. 2903.41(A)(1)(a) and (b).

{¶ 52} Individuals who are classified as violent offenders are presumed to be required to enroll in the violent offender database with respect to the classifying offense. R.C. 2903.42(A)(1)(a). The presumption is rebuttable, and the sentencing court must inform the offender before sentencing of the presumption, of the offender’s right to file a motion to rebut the presumption, of the procedure and criteria for rebutting the presumption, and of the possible outcome. R.C. 2903.42(A)(1)(a).

{¶ 53} To rebut the presumption, a violent offender must file a motion with the trial court, prior to or at sentencing, asserting that he or she was not the principal offender in the commission of the classifying offense and requesting that the court not require enrollment in the violent offender database. R.C. 2903.42(A)(2)(a). The offender bears the burden to establish by a preponderance of the evidence that he or she was not the principal offender

in the commission of the offense. R.C. 2903.42(A)(4). If the violent offender proves that he or she was not the principal offender, the court must “continue the hearing for the purpose of determining whether the offender, notwithstanding the rebuttal of the presumption, should be required to enroll in the violent offender database and have all VOD duties with respect to that offense.” R.C. 2903.42(A)(4)(a).

{¶ 54} We have held that “the failure to comply with these requirements will result in the reversal of a trial court’s order to enroll in the violent offender database and a corresponding order to provide, on remand, the appropriate advisements and the opportunity to file a motion to rebut the presumption for enrollment.” *State v. Smith*, 2026-Ohio-144, ¶ 10 (2d Dist.). Notably, in *Smith*, the defendant had pled guilty to domestic violence, felonious assault, and kidnapping, and he was the sole offender. Other courts have similarly held that the trial court’s obligations are mandatory and have reversed due to failure to comply with the notification requirements, even when the defendant is the sole offender. See, e.g., *State v. Williams*, 2021-Ohio-3579, ¶ 42-44 (5th Dist.), *rev’d on other grounds*, 2022-Ohio-1352.

{¶ 55} In this case, the trial court provided notifications under R.C. 2903.41(A)(1)(a) at the sentencing hearing, not prior to it. The court informed Phelps orally and in writing of his duties to register as a violent offender and that he “can also request a hearing on this violent offender notification.” However, it did not inform Phelps of his right to file a motion to rebut the presumption of enrollment, of the procedure and criteria for rebutting the presumption, and of the effect of a rebuttal and the post-rebuttal hearing procedures and possible outcomes. We therefore agree with Phelps that the trial court erred by failing to timely give all the notifications required by R.C. 2903.42(A)(1)(a).

{¶ 56} Phelps’s third assignment of error is sustained.

V. Conclusion

{¶ 57} Phelps's conviction for having weapons while under disability is vacated. The portion of the trial court's judgment pertaining to Phelps's duty to enroll in the violent offender database is reversed, and the matter is remanded for the trial court to provide the notifications under R.C. 2903.42(A)(1)(a) and an opportunity to file a motion to rebut the statutory presumption that he must enroll in the violent offender database. In addition, the matter is remanded for a nunc pro tunc entry to reflect that the sentences for attempted murder and aggravated robbery were ordered to be served consecutively. Phelps's aggregate sentence of 33 to 38½ years in prison remains unchanged. In all other respects, the trial court's judgment is affirmed.

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TUCKER, J., and HANSEMAN, J., concur.