[Cite as *State v. Luster*, 2026-Ohio-4342.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

v.

ISHMEAL M. LUSTER,

DEFENDANT-APPELLANT.

CASE NO. 1-25-61

OPINION AND JUDGMENT ENTRY

Appeal from Allen County Common Pleas Court
Trial Court No. CR2025 0167

Judgment Affirmed

Date of Decision: November 2, 2026

APPEARANCES:

April F. Campbell **for Appellant**

John R. Willamowski, Jr. **and** ***Joshua Carp*** **for Appellee**

MILLER, J.

{¶1} Defendant-appellant, Ishmael Luster ("Luster"), appeals the judgment of conviction and sentence entered against him in the Allen County Court of Common Pleas on October 2, 2025. For the reasons set forth below, we affirm.

Facts and Procedural History

{¶2} This case originated on November 20, 2024, when an Allen County grand jury indicted Luster on one count of felonious assault with a firearm specification in violation of R.C. 2903.11(A)(2) and R.C. 2941.145(D), a felony of the second degree, together with a repeat violent offender ("RVO") specification pursuant to R.C. 2941.149(A) ("Count One"); and one count of having weapons while under disability with a firearm specification in violation of R.C. 2941.141(D), a felony of the third degree. ("Count Two") Luster entered pleas of not guilty.

A. The Shooting and Its Immediate Aftermath

{¶3} On the evening of October 31 and into the early morning of November 1, 2024, Cameron Lott ("Lott") attended a Halloween party at 422 Harrison Avenue, Lima Ohio. He consumed alcohol and marijuana during the gathering. Medical testing later reflected a blood-alcohol concentration of 0.29. At approximately 2:18 a.m. on November 1, Lott sustained a single gunshot wound in the 400 block of Harrison Avenue. A residential Ring doorbell camera at 426 Harrison Avenue recorded portions of the activity surrounding the shooting. The footage showed people gathered near vehicles along the street but did not clearly depict a firearm or the precise moment the bullet struck Lott.

{¶4} The footage showed a person later identified as Luster move a hand toward his right side and lift his shirt. Detective Snyder, the law-enforcement investigator who reviewed the video and GPS evidence and later interviewed Luster, described that movement as consistent with reaching for a firearm carried near the waistband. Shortly before Lott fell, a woman's voice could be heard calling Luster's first name. The recording then showed bystanders attempting to place Lott in a silver vehicle before transporting him from the area in a different vehicle. A second residential camera captured some of the activity that followed.

{¶5} Evan Humes, an Adult Parole Authority officer who knew both Luster and Lott and later participated in recovering Luster's ankle monitor, identified the two men when the recording was played at trial. Humes identified Luster near the sidewalk on the right side of the recording and Lott near a red vehicle.

{¶6} Riley Brubaker, a Lima police patrol officer who responded to Harrison Avenue after the 9-1-1 calls, spoke with a resident of 426 Harrison Avenue who directed police to the Ring doorbell camera footage. By the time officers arrived, neither Lott nor any suspected shooter remained at the scene. Police searched the area but recovered no firearm, blood, or discharged cartridge casing. They found two cellular telephones near the silver vehicle, including one that Lott later acknowledged belonged to him. Lott declined to provide police with its passcode. Detective Snyder testified that the absence of a spent casing did not exclude the possibility that a firearm had been discharged. He

explained that a revolver retains its casings and that a semiautomatic pistol may fail to eject a casing under certain circumstances.

{¶7} Approximately ten to fifteen minutes after officers reached Harrison Avenue, dispatch advised them that a shooting victim had arrived at 900 North West Street. George Caldwell, a Lima Police Department sergeant who responded to that location and recognized Lott, found him outside a vehicle in front of his mother's residence. Caldwell's body camera recorded the scene. An ambulance transported Lott to St. Rita's Medical Center. He had sustained a gunshot wound to his lower back near the L-2 spinal area and underwent surgery. Medical personnel removed a bullet, which police later collected as evidence. The injury left Lott walking with a limp and using a crutch when he appeared for trial.

B. Lott's Hospital Identification and Later Repudiation

{¶8} At approximately 11:31 a.m. on November 1, about nine hours after the shooting, Brittany Corsaro, the Adult Parole Authority officer responsible for supervising Lott, along with her partner visited Lott in his hospital room. During the encounter, Lott identified Luster as the person who had shot him. Corsaro wore a body camera equipped with a 90-second recall function. When she activated the camera, that feature preserved the portion of the conversation preceding activation, including Lott's identification. The recording later became State's Exhibit 23 and was played for the jury over the defense's objection.

{¶9} The circumstances surrounding the identification became a disputed issue at trial. Lott had arrived at the hospital with a blood-alcohol concentration of 0.29, had undergone surgery, and had received anesthesia and other medications. He testified that he remained impaired after surgery and did not remember speaking with the parole officers or identifying Luster.

{¶10} Before trial, Lott signed an affidavit stating that Luster had not shot him and disputing the reliability of the hospital identification. Family members assisted Lott with preparing the affidavit, and a cousin shared by Lott and Luster drove Lott to a notary and then to the Allen County Public Defender's Office. At the State's request, the trial court called Lott as the court's witness. Lott maintained that Luster was not responsible for the shooting and testified that he did not know who had shot him. He also denied remembering the hospital identification. Lott identified Rakeem Jones ("Jones"), a man with whom he had argued at the Halloween party, as someone who might have been involved. Jones was relevant as the only alternative person Lott named during his testimony, but Lott acknowledged that he had not seen Jones shoot him. Jones died on December 14, 2024.

{¶11} After Lott completed his testimony, the State offered the hospital recording through Corsaro. The defense objected, but the trial court admitted the recording and permitted the jury to hear Lott's earlier identification of Luster.

C. The GPS Evidence and Removal of the Ankle Monitor

{¶12} At the time of the shooting, Luster was serving a period of post-release control and wore a GPS ankle monitor administered through Oriana House. Cory Duff, a

parole officer who explained the operation and accuracy of the monitoring system, testified that the device ordinarily generated location information every 30 seconds to one minute and reported coordinates within a range of feet. The monitor generated data points associated with 417, 425, and 427 Harrison Avenue around the time of the shooting. Those addresses were in the immediate area where Lott was shot. Snyder interpreted the data as showing an abrupt increase in Luster's speed and southbound movement after the shooting, which he compared to movement visible in the residential-camera footage.

{¶13} Later on November 1, Oriana House received a tamper alert indicating that the monitor's internal fiber-optic wire had been severed. Humes and Duff followed its final reported coordinates to a parking lot near St. Rita's Medical Center. They recovered the detached monitor but did not find Luster.

{¶14} Police arrested Luster in March 2025, approximately five months after the shooting. Snyder subsequently interviewed him at the Lima Police Department, and portions of the recorded interview were introduced at trial.

D. Luster's Pretrial Request for New Counsel

{¶15} Four days before trial, the court conducted a hearing concerning a letter in which Luster requested replacement of his court-appointed defense attorney. The court also considered a defense request to continue the trial. Luster maintained that communication with counsel had deteriorated and that counsel had not discussed the planned defense strategy with him. In response, counsel described his preparation, including reviewing discovery and applicable law, issuing subpoenas, filing a motion in

limine and a motion to suppress, submitting supplemental case law support requested by Luster, and discussing whether Luster would testify. Counsel advised the court that he was prepared to proceed. The court denied the request for substitute counsel and the continuance.

{¶16} On the morning of trial, the court considered the defense challenges to Lott's recorded hospital statement. Rather than make a final admissibility determination, the court reserved its ruling until Lott testified and the circumstances surrounding the identification were developed. Because Lott had indicated that he would not support the prosecution's account of the shooting, the court granted the State's request to call him as the court's witness.

{¶17} Before jury selection, the parties entered stipulations concerning the foundations for the Ring doorbell camera recordings, Lott's medical records, and the GPS-monitoring records. The defense also stipulated to prior conviction or guilty plea offered in connection with the RVO specification attached to Count One.

E. The Jury Trial and Renewed Request for Counsel

{¶18} Luster's trial began on September 30, 2025. The State presented Lott, law-enforcement officers, parole personnel, medical and GPS records, residential-camera footage, and the hospital recording. The defense challenged the reliability of Lott's hospital identification and emphasized his intoxication, medication, lack of memory, subsequent affidavit, and trial testimony denying that Luster had shot him.

{¶19} During the State's case, Luster again complained about appointed counsel. After an exchange between Luster and counsel occurred in the jury's presence, the court excused the jury and allowed Luster to present a prepared statement. Luster asserted that counsel had not shared the defense strategy, had failed to object to certain evidence, and had declined to ask questions that Luster believed should have been presented. Counsel responded that he had limited his disclosure of strategy because Luster continued discussing the case during recorded jail calls despite warnings that jail calls were recorded and the State could obtain those communications. Counsel also explained that he deliberately restricted his questioning about the GPS evidence because he regarded that evidence as particularly damaging and did not want to emphasize it before the jury. After hearing from Luster and counsel, the court again declined to appoint a different attorney.

{¶20} The State completed its presentation of evidence on October 1, 2025. The defense moved for a judgment of acquittal on both counts, and the trial court denied the motion. When trial resumed on October 2, the defense presented no evidence and rested. Counsel renewed the motion for acquittal, which the court again denied. After closing arguments and the court's instructions, the jury began deliberating.

F. Verdicts, Sentence, and Appeal

{¶21} On October 2, 2025, the jury returned guilty verdicts. On Count One, the jury found Luster guilty of felonious assault and the attached firearm specification. On Count Two, Luster was found guilty of having a weapon while under disability and the

accompanying firearm specification. The trial court separately found Luster guilty of the RVO specification attached to Count One.

{¶22} The case proceeded to sentencing that same day. After hearing from counsel and Luster and considering the sentencing criteria, the trial court determined that the two offenses would not merge and ordered the firearm-specification terms to be served consecutively. Although the court found Luster guilty of the RVO specification, no additional prison term was imposed for that specification.

{¶23} For felonious assault, the court imposed an indefinite prison term of eight to twelve years, followed by a consecutive mandatory term of 54 months for the firearm specification. For having a weapon while under disability, it imposed a consecutive 36-month term and an additional consecutive mandatory term of 18 months for the firearm specification. The resulting aggregate stated prison term was 17 to 21 years.

{¶24} Because Luster was on post-release control when the offenses occurred, the trial court terminated that supervision and ordered him to serve the remaining 1,557 days consecutively to the sentence imposed in this case. The court also awarded 73 days of jail-time credit.

{¶25} Luster thereafter timely pursued this appeal. He raises eight assignments of error.

Assignments of Error

{¶26} At the outset, appellate counsel conceded during oral argument that Luster's fourth assignment of error is without merit and stated that the assignment is fully

withdrawn. Therein, Luster had argued that "[t]he trial court erred in admitting [Luster's] prior adjudication and juvenile specification as previous 'convictions' because they could not be constitutionally used and thus constituted inadmissible evidence of prior bad acts." Upon review of the record, appellate counsel agreed with the state that the prior violation at issue resulted in an adult conviction and was not a juvenile adjudication. Appellate counsel further clarified that to the extent any remaining assignments of error rely on the mistaken premise that Luster's prior violation resulted in a juvenile adjudication rather than an adult conviction, those arguments are withdrawn solely as to that specific issue.

First Assignment of Error

Luster's request for new counsel should have been granted.

{¶27} In his first assignment of error, Luster argues that the trial court abused its discretion when it failed to discharge defense counsel upon Luster's repeated requests following an alleged breakdown in communication between them.

Standard of Review

> The determination whether to grant a continuance is entrusted to the broad discretion of the trial court. *State v. Unger*, 67 Ohio St.2d 65, syllabus (1981). Relevant factors include the length of the delay requested, prior continuances, inconvenience, and the reasons for the delay. *State v. Landrum*, 53 Ohio St.3d 107, 115 (1990).
>
> In addition, "'[a]n indigent defendant has no right to have a particular attorney represent him and therefore must demonstrate "good cause" to warrant substitution of counsel.'" *State v. Cowans*, 87 Ohio St.3d 68, 72 (1999), quoting *United States v. Iles* 906 F.2d 1122, 1130 (6th Cir. 1990). The trial court may deny the request to substitute counsel if the complaint is unreasonable. *State v. Deal*, 17 Ohio St.2d 17, syllabus (1969). The trial

> court's decision is reviewed under an abuse-of-discretion standard. *Cowans,* 87 Ohio St.3d at 73.

State v. Conway, 2006-Ohio-791, ¶147-148.

{¶28} "In evaluating a request for substitute counsel, the court must balance 'the accused's right to counsel of his choice [against] the public's interest in the prompt and efficient administration of justice.'" *State v. Clemons*, 2002-Ohio-5906, ¶ 10, quoting *United States v. Jennings*, 83 F.3d 145, 148 (6th Cir. 1996). The defendant must show '"a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel." *State v. Coleman*, 37 Ohio St.3d 286, 292 (1988), quoting *People v. Robles*, 2 Cal.3d 205, 215 (1970). "Factors to consider in deciding whether a trial court erred in denying a defendant's motion to substitute counsel include 'the timeliness of the motion; the adequacy of the court's inquiry into the defendant's complaint; and whether the conflict between the attorney and client was so great that it resulted in a total lack of communication preventing an adequate defense.'" *State v. Jones*, 91 Ohio St.3d 335, 342 (2001), quoting *Jennings*, 83 F.3d at 148.

Analysis

{¶29} Luster argues that the trial court should have discharged his court-appointed attorney because communications had broken down to the extent that his attorney did not share defense strategy with him and he disagreed with statements the attorney made in his defense. Specifically, Luster contends his counsel "gave no opening. He asked no questions of many of the witnesses. He did not argue that Luster's adjudications should

not be used against him. He did not move to dismiss the indictments. And he told Luster to shut up in the middle of trial." (Appellant's Brief at 7).

{¶30} Regarding the alleged failure to discuss defense strategy, Luster's counsel explained this was due to the fact Luster would openly discuss the case, the evidence, and Lott's affidavit during jail calls, despite repeated warnings that such calls were recorded and available to the State. As for the failure to cross examine witnesses, particularly witnesses brought forth regarding GPS testimony, Luster's counsel had the following explanation:

> [Defense Counsel]: He's pointing out things on the GPS. Frankly, from a strategy standpoint, the GPS is the worst thing for him. So, I'm not going to continue to probe the GPS issues and give the State more time to hammer that home or for the jury to hear about he's there on a GPS monitor. That's why I don't ask those questions.
>
> There is a strategy, too, on cross examination, and I'm sure the Court's been made well aware, that sometimes, or, one of the ten commandments of cross examination is if you don't know exactly what the answer is don't ask, and if you know what the answer is and it's going to be damaging then don't ask the question. I'm following that mantra.

(October 1, 2025 Tr., Vol. II, at 303).

{¶31} Defense counsel further conceded that he should have used more polite language instead of telling Luster to "shut up," but also clarified that he did so in response to Luster making impromptu loud comments regarding the case in front of the jury during

trial. The trial court further advised Luster to be cautious and that testifying from his seat would subject himself to cross examination.

{¶32} We find these reasons in the record offered to counterpoint Luster's arguments were cogent and reasonable such that the trial court did not abuse its discretion when it denied Luster's request for new counsel. An indigent defendant is entitled to competent, effective representation, not a court-appointed attorney of his own choosing or fancy. "'While the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate . . . rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.'" *Jones*, 91 Ohio St.3d at 342, quoting *Wheat v. United States*, 486 U.S. 153, 159 (1988).

{¶33} Luster's requests for new counsel came on the eve of trial and during the course of the presentation of evidence. The trial court made a proper inquiry of both Luster and defense counsel and did not find a communication breakdown of such magnitude that jeopardized Luster's right to effective assistance of counsel. We find no error in the trial court's decision to not substitute counsel.

{¶34} Luster's first assignment of error is overruled.

Second Assignment of Error

Luster's attorney was prejudicially ineffective, requiring reversal of Luster's convictions.

{¶35} In his second assignment of error, Luster argues that he received ineffective assistance of counsel at trial, because his trial counsel stipulated to prior convictions, failed to argue against the State's case in opening, did not ask questions of multiple witnesses, and did not disclose trial strategy to him. Luster's argument under this assignment of error largely centers on the stipulation of his prior juvenile conviction—an argument appellate counsel conceded and explicitly withdrew during oral argument as previously discussed. Accordingly, we do not address that argument here, but instead limit our analysis to Luster's remaining contentions.

Standard of Review

{¶36} In order to establish ineffective assistance of counsel, a defendant must show "'(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that but for counsel's errors, the proceeding's result would have been different.'" *State v. Rogers*, 2025-Ohio-4794, ¶ 25, quoting *State v. Mundt*, 2007-Ohio-4836, ¶ 62, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984). "Both the deficient-performance and prejudice prongs must be met for a successful ineffective-assistance claim; neither is individually sufficient. *Id*.

Analysis

{¶37} As discussed in the first assignment of error, we find that Luster's trial counsel explained to the court sound reasons for choosing not to disclose trial strategy because Luster continued to discuss the trial during jail calls despite repeated warnings that

these calls would be made available to the prosecution. Likewise, his trial counsel chose not to question multiple witnesses in order to avoid highlighting testimony that would be unfavorable to his client. While Luster's trial counsel did not provide any explanation for his failure to argue against the state's case in opening, "[w]e will not find ineffective assistance of counsel based on trial strategy merely because it was unsuccessful." *State v. Thomas*, 2020-Ohio-5379, ¶ 31 (3d Dist.). Luster may disagree with trial counsel's strategy, but that does not invalidate the strategy. "Questionable trial strategies and tactics, however, do not rise to the level of ineffective assistance of counsel." *State v. Mohamed*, 2017-Ohio-7468, ¶ 18. Furthermore, even if any of these trial strategies constituted deficient performance of counsel under an objective standard, Luster has failed to exhibit how he was prejudiced by the tactic. We note that Luster's sole argument regarding the prejudice was tied entirely to the withdrawn issue concerning the stipulation to his prior conviction.

{¶38} Luster's second assignment of error is overruled.

Third Assignment of Error

The trial court erred in admitting Lott's prior identification of Luster under Evid.R. 801(D) and it was not harmless.

{¶39} Luster argues in his third assignment of error that the trial court by admitting Lott's prior identification of Luster at the hospital nine hours after the shooting. Specifically, Luster contends, "[b]ecause Lott was not examined 'concerning the statement', it was inadmissible under [Evid.R.] 801(D)(1)." (Appellant's Brief at 10).

Standard of Review

{¶40} A court has discretion to admit evidence under Evid.R. 801(D)(1)(c). *See State v. Steward*, 2020-Ohio-4553, ¶ 44 (10th Dist.). A court abuses its discretion if its decision is an "unreasonable, arbitrary, or unconscionable use of discretion, or as a view or action that no conscientious judge could honestly have taken." *State v. Brady*, 2008-Ohio-4493, ¶ 23.

Analysis

Evid.R. 801(D)(1)(c) states the following:

> A statement is not hearsay if:
> (1) Prior Statement by Witness. The declarant testifies at trial or hearing and is subject to examination concerning the statement, and the statement is
> * * *
> (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

{¶41} Notably, Evid.R. 801(D)(1) makes no requirement that the witness be cross-examined regarding the prior statement, merely that the witness be "subject to examination concerning the statement." *See State v. Davis*, 2024-Ohio-1504, ¶ 26 (5th Dist.), quoting *Crawford v. Washington*, 541 U.S. 35, 59, fn 9 (2004) ("[W]hen the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. . . The Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it."). Luster presents no authority to the contrary. In the present case Lott was subject to cross-examination by both the State and defense counsel. While the State refrained from cross-examining Lott on the

prior statement, defense counsel cross-examined him regarding both a family member informing him of his hospital statement and on his affidavit which directly addressed the same.

{¶42} Regarding the nine-hour interval, Evid.R. 801(D)(1)(c) does not mandate a specific timeframe by which the witness perceives the person "soon after." Ohio courts have found that prior identification made within hours or days of the crime have been deemed sufficient to satisfy the "soon after" requirement. *See State v. Ingram,* 2007-Ohio-7136, ¶ 69 (10th Dist.) (in which the victim identified the perpetrator within a week); *see also State v. Anderson*, 2003-Ohio-5439, ¶ 75 (7th Dist.) (identification within four days was permissible). Rather than set a specific timeframe during which the witness must perceive the individual, we look to whether the prior identification is reliable under the totality of the circumstances. *See State v. Jells*, 53 Ohio St.3d 22, 27 (1990) ("The focus, under the 'totality of the circumstances' approach, is upon the reliability of the identification. . . ."); *see also Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) ("[R]eliability is the linchpin in determining the admissibility of identification testimony. . . ."). Reliability factors include "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." *Brathwaite* at 114.

{¶43} "Ohio courts . . . have deemed evidence that a declarant was identifying an individual with whom they were acquainted as demonstrating indicia of reliability."

Steward, 2020-Ohio-4553 at ¶ 9 (10th Dist.); *see State v. Young*, 2015-Ohio-2075, ¶ 41 (5th Dist.) (the witness's out-of-court identification of the perpetrator as his cousin was deemed reliable, because he "was familiar with the appellant and positively identified him in the photo array within hours of the transaction."); *see also*, *State v. Grant*, 2006-Ohio-177, ¶ 2, 17-19 (8th Dist.) (finding the victim's prior identification reliable because she recognized the defendant as her handyman). As for Lott's alleged impairment due to alcohol, marijuana, medications and anesthesia, these are factors that go towards the weight and reliability of the testimony, rather than to its admissibility. *See State v. Clements*, 2007-Ohio-2617, ¶ 47 (5th Dist.), citing *State v. Brown*, 38 Ohio St.3d 305, 310-311 (1988) ("[T]he fact that the victim identified the appellant as his assailant at a time when the victim was in pain, bleeding or after waking-up after surgery go to weight and reliability of the testimony rather than admissibility.") Accordingly, we find the trial court did not abuse its discretion in admitting Lott's prior identification of Luster as the shooter. Lott was subject to cross-examination at trial, and his identification was reliable given that Luster is a close family member and was the first person Lott identified as the shooter when questioned in his hospital room nine hours later.

{¶44} Luster's third assignment of error is overruled.

Fifth Assignment of Error

The evidence was legally insufficient, because (a) Luster could not be convicted of the specifications because his prior adjudication could not be used to convict him of either specification, (b) Luster could not be found to be a repeat violent offender because the prior used to make that finding was a prior juvenile adjudication, and (c) the evidence against

Luster for committing felonious assault and weapons while under disability was legally insufficient.

Sixth Assignment of Error

The evidence manifestly weighted against convicting Luster of felonious assault, weapons while under disability, and the accompanying gun specifications.

{¶45} Luster's fifth and sixth assignment of errors both require an analysis of the evidence and shall, therefore, be reviewed together. At the outset, we find parts (a) and (b) of Luster's fifth assignment of error to lack merit because they rely on the conceded argument that Luster's prior offense was a juvenile adjudication and not a conviction. We will, therefore, limit our analysis to just the charges for which Luster was convicted, i.e.: Luster's contention in part (c) of the fifth assignment of error and the entirety of the sixth assignment of error.

Standard of Review

{¶46} Manifest "weight of the evidence and sufficiency of the evidence are clearly different legal concepts." *State v. Thompkins*, 78 Ohio St.3d 380, 398 (1997). Therefore, we address each legal concept individually.

{¶47} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by state constitutional amendment on other*

grounds, State v. Smith, 80 Ohio.St.3d 89 (1997). Accordingly, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id*. "In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of witnesses, as both are functions reserved for the trier of fact." *State v. Jones*, 2013-Ohio-4775, ¶ 33 (1st Dist.). *See also State v. Berry*, 2013-Ohio-2380, ¶ 19 (3d Dist.) ("Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence."), citing *Thompkins* at 386.

{¶48} On the other hand, when reviewing whether a conviction is against the manifest weight of the evidence, "an appellate court must 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 factfinder '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. Williams*, 2024-Ohio-2307, ¶ 22 (3d Dist.), quoting *Thompkins* at 387. "A reviewing court must, however, allow the trier of fact appropriate discretion on matters relating to the weight of the evidence and the credibility of the witnesses." *State v. Sewell*, 2016-Ohio-7175, ¶ 8 (3d Dist.), citing *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. "Only in exceptional cases, where the evidence 'weighs heavily against the conviction,' should an appellate court overturn the trial court's judgment." *State v. Haller*, 2012-Ohio-5233, ¶ 9 (3d Dist.), quoting *State v. Hunter*, 2011-Ohio-6524, ¶ 119.

Analysis

{¶49} Luster contends the evidence against him is legally insufficient, because the State relied primarily on Lott's prior identification testimony in the hospital, which he would find to be inadmissible. Without Lott's testimony, Luster argues, the only evidence is that the officers "identified Luster on a Ring camera video, [which is] a low-quality video that does not capture a gun or the actual event. And his GPS tracker showed he was near the location." (Appellant's Brief at 14).

{¶50} Because we find Lott's prior identification of Luster admissible pursuant to our review of Luster's third assignment, we do not find this evidence to be legally insufficient. Furthermore, we find that even without Lott's testimony, sufficient evidence existed such that a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. At trial, Luster's parole officer identified Luster as the shooter on the Ring doorbell camera footage, and both the doorbell camera footage and the GPS data from Luster's ankle monitor placed Luster at the site of the shooting. The GPS data showed Luster ran away quickly from the site of the shooting which would be consistent with the doorbell camera footage showing the shooter fleeing the scene. Someone calls out "Ishmael" just as the shot was fired which was recorded on the doorbell camera footage. Evidence was produced to show Luster's ankle monitor was removed on November 1, 2025, the day of the shooting, and Luster disappeared for nearly five months thereafter. Cumulatively, we find this sufficient evidence by which a rational trier of fact could rely on in determining Luster's guilt beyond a reasonable doubt.

{¶51} As for manifest weight of the evidence, Luster argues that Lott's subsequent affidavit and testimony at trial attesting that Luster was not the shooter was more reliable and persuasive than Lott's prior identification of Luster and "there was no other evidence beyond [Lott's inadmissible prior identification] that supported his conviction." *Id*. at 15. Indeed, because we find the trial court properly admitted Lott's prior identification of Luster, the jury was presented with contradicting testimony from Lott concerning Luster's culpability as the shooter. However, "[a] defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial." *State v. Chandler*, 2006-Ohio-2070 (10th Dist.). "The determination of weight and credibility of the evidence is for the trier of fact." *Id*., citing *Dehass*, 10 Ohio St.2d 230, at paragraph one of the syllabus. "A jury may take into consideration a witness's conflicting testimony in determining his or her credibility and the persuasiveness of his or her account by either discounting or resolving the discrepancies." *State v. Barrie*, 2016-Ohio-5640, ¶ 22 (10th Dist.), citing *State v. Jackson*, 2015-Ohio-3322, ¶ 17 (10th Dist.). It is the job of the fact finder to weigh the evidence and determine the credibility of the witnesses before them and, as such, may choose to believe a witness in all of their testimony, some of their testimony, or to discredit them entirely. *In re K.S.*, 2026-Ohio-79, ¶ 16 (3d Dist.).

{¶52} Luster merely asserts that Lott's recantation of his prior identification statement was more reliable. However, such a determination was within the province of the jury to decide. The jury was free to consider all the evidence tending to identify Luster as the shooter and weigh that evidence against Lott's recantation. We find these

considerations were properly before the jury who was in the best position to hear all of the witnesses' testimony, observe the witnesses, and determine their reliability. We may not substitute our judgment for that of the trier of fact on the issue of witness credibility unless it is manifestly clear that the factfinder lost its way. *State v. McGuire*, 2015-Ohio-1887, ¶ 76 (3d Dist.). On the record before us, we do not conclude the jury lost its way and created a manifest miscarriage of justice in arriving at its verdicts.

{¶53} Luster's fifth and sixth assignments of error are overruled.

Seventh Assignment of Error

Because of cumulative error, Luster was denied his right to a fair trial.

{¶54} Luster argues that cumulative errors deprived him of his right to a fair trial. He asserts that the following issues cumulatively warrant reversal: (1) an alleged lack of evidence supporting his guilt, (2) the jury's exposure to prior convictions,[1] and (3) ineffective assistance of counsel. Because our analysis of Luster's prior assignments of error revealed no underlying errors, the cumulative error doctrine does not apply and no further discussion is required.

{¶55} Luster's seventh assignment of error is overruled.

Eighth Assignment of Error

Luster's sentence should be reversed because they are contrary to law.

[1] Luster does not state what these convictions were, but we presume he is referring to his misstated prior juvenile adjudication. This premise is incorrect, as this was, in fact, an adult conviction with an attached firearm specification, and appellate counsel conceded and withdrew this issue during oral argument.

{¶56} In his eighth assignment of error, Luster argues that the mandatory prison terms imposed for his underlying offenses are contrary to law. Relying on the Supreme Court of Ohio's decision in *State v. Logan*, 2025-Ohio-1772, he maintains that R.C. 2929.13(F)(8) does not make the prison term for an underlying felony mandatory.

Standard of Review

{¶57} Under R.C. 2953.08(G)(2), an appellate court will reverse a sentence "only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 2016-Ohio-1002, ¶ 1. Clear and convincing evidence is that "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Id.* at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

Analysis

{¶58} This court has recently, and repeatedly, rejected the argument Luster now advances. *State v. Totty*, 2026-Ohio-2140, ¶ 60 (3d Dist.); *State v. Seffernick*, 2025-Ohio-2292, ¶ 23-25 (3d Dist.); *State v. Peters*, 2023-Ohio-4362, ¶ 85 (3d Dist.). Our precedent holds "that R.C. 2929.13(F)(8) obligates the trial court to impose a mandatory prison term for any felony (except carrying concealed weapons) where the offender had or controlled a firearm when committing that offense," and that "[t]he mandatory sentence required by R.C. 2929.13(F)(8) is for the underlying felony and not for any firearm specification that might be attached to the offense." *Peters* at ¶ 85. *Accord State v. Wolfe*, 2022-Ohio-96, ¶

25 (3d Dist.). Nothing in *Logan* is to the contrary. There, the Supreme Court of Ohio held that, because "a firearm specification is not an offense," R.C. 2929.13(F)(8) "requires a trial court to impose a prison sentence for a defendant's underlying felony offense if a firearm specification is attached." *Logan* at ¶ 2. *See Seffernick* at ¶ 25 (the trial court "correctly applied R.C. 2929.13(F)(8) consistent with our decision in *Wolfe*—and as approved by the Supreme Court of Ohio in *Logan* . . . .").

{¶59} Here, the jury found Luster guilty of the firearm specification attached to each of his underlying offenses, thereby finding that he had a firearm on or about his person or under his control while committing each felony. The trial court correctly cited to *Logan* in its judgment entry and imposed mandatory prison terms for those offenses, and Luster has not demonstrated that the terms it imposed are contrary to law.

{¶60} Luster's eighth assignment of error is overruled.

Conclusion

{¶61} For the foregoing reasons, the appellant's assignments of error are overruled. Having found no error prejudicial to the plaintiff-appellant in the particulars assigned and argued, the judgment of the Allen County Common Pleas Court is affirmed.

Judgment Affirmed

ZIMMERMAN, P.J. and WALDICK, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

Mark C. Miller, Judge

William R. Zimmerman, Judge

Juergen A. Waldick, Judge

DATED:
/jlm