[Cite as *State v. Armstrong*, 2026-Ohio-245.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA19
	:	
v.	:	
	:	DECISION AND
Joshua Armstrong,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Christopher Pagan, Repper-Pagan Law, Ltd., Middletown, Ohio, for appellant.

Nicole Coil, Washington County Prosecuting Attorney, and Kelsey R. Riffle, Assistant Washington County Prosecuting Attorney, Marietta, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Joshua Armstrong, appeals the judgment of the Washington County Court of Common Pleas convicting him of one count of domestic violence and three counts of endangering children. On appeal, appellant contends that 1) the child endangering instruction provided to the jury used a repealed recklessness definition; and 2) the State elicited insufficient evidence to convict him of child endangering under R.C. 2919.22(A). However, because we find no merit to the arguments raised on appeal, both of appellant's assignments of error are overruled. Accordingly, the judgment of the trial court is affirmed.

FACTS

{¶2} Appellant was indicted on February 28, 2024, on two fourth-degree felony counts of strangulation in violation of R.C. 2903.18, one first-degree misdemeanor count of domestic violence in violation of R.C. 2919.25, and three first-degree misdemeanor counts of endangering children in violation of R.C. 2919.22. The victims of the offenses were appellant's girlfriend, A.S., who is also the mother of his children, as well as his three minor children, ages six, four, and three at the time of the offenses. The indictment stemmed from an incident that occurred on February 3, 2024, in the residence appellant shared with the victims.

{¶3} Appellant pled not guilty to the charges and the matter proceeded to a jury trial on July 24, 2024. The State introduced four witnesses which included the victim, A.S., the 911 dispatcher, Rachael Erb, as well as Deputies Joshua Windland and Mark Gainer, who responded to the incident. A.S. testified that appellant returned home late on the night in question after an evening of drinking. She testified that he was yelling and cursing, and that she tried to quiet him because he was in the bathroom across the hall from the bedroom where the couple's three children were sleeping. She testified that appellant continued to yell and scream and then pushed her up against a wall.

{¶4} A.S. testified that the altercation escalated with appellant eventually putting his hands around her neck and dragging her through the dining room and

into the living room. She testified that she got away from him and grabbed her phone as the children came out of their room screaming and crying. She ushered the children back into their room and went inside with them, locked the door, and put her back against the door. She testified that appellant was beating and banging on the door until he broke the door down over top of her. She testified that the room was small and the beds sat only about two feet away from the door. She further stated that if she would not "have been there to catch it, it would have hit the kids." Photo exhibits of the room were entered into evidence showing that the bed was located in close proximity to the door frame and that the door was off of its hinges.

{¶5} A.S. further testified that after appellant beat the door down, he walked away and then returned to the doorway with a bottle of Tylenol and tipped it up to swallow it as if he were drinking a can of pop. She explained that she knocked the bottle out of his hands, causing the contents to drop onto the floor. Although she tried to pick up all the pills, the three-year-old child presented the deputy with a handful of the pills as he was there taking the report. She testified that the children had been taught not to swallow pills and there is no evidence that any of the children ingested any of the pills.

Appellant moved for acquittal at the close of the State's case, however, his motion was denied by the trial court. The jury ultimately acquitted appellant on

both strangulation charges but found him guilty of domestic violence and the three counts of endangering children. Appellant then filed a post-verdict motion for acquittal, which was also denied by the trial court. The trial court thereafter sentenced appellant to 90 days in jail on each count, to be served concurrently with credit for time served of 20 days. The trial court further suspended the remaining 70-day sentence and placed appellant on supervised probation for two years.

{¶6} It is from the trial court's September 11, 2024 sentencing entry that appellant now brings his timely appeal, setting forth two assignments of error for our review.

ASSIGNMENTS OF ERROR

I. THE CHILD ENDANGERING INSTRUCTION USED A REPEALED RECKLESSNESS DEFINITION.

II. THE STATE ELICTED INSUFFICIENT EVIDENCE TO CONVICT ARMSTRONG OF M1 CHILD ENDANGERING UNDER R.C. 2918.22(A).[1]

ASSIGNMENT OF ERROR I

{¶7} In his first assignment of error, appellant contends that the jury instructions provided to the jury for the offense of endangering children included a definition for the mens rea of reckless that had been repealed. The State concedes this error but notes that because appellant failed to object to the instruction below,

[1] Although appellant cites to R.C. 2918.22(A), endangering children is actually prohibited by R.C. 2919.22 and he was convicted for three violations of R.C. 2919.22(A).

he has waived all but plain error on appeal. While the State maintains that the erroneous instruction did not prejudice appellant and thus did not rise to the level of plain error, appellant argues that the provision of the erroneous definition resulted in not only plain error, but also structural error, which he further argues does not require a showing of prejudice.

Standard of Review

{¶8} Generally, when reviewing errors in jury instructions, a trial court must consider a jury charge as a whole. *See State v. Dodridge*, 2025-Ohio-2856, ¶ 56 (4th Dist.), citing *State v. Huish*, 2023-Ohio-365, ¶ 54 (10th Dist.), in turn citing *Cromer v. Children's Hosp. Med. Ctr. of Akron*, 2015-Ohio-229, ¶ 35-36. It should be noted, however, that " ' "[a]n unnecessary, ambiguous, or even affirmatively erroneous portion of a jury charge does not inevitably constitute reversible error." ' " *Dodridge* at ¶ 56, quoting *Huish* at ¶ 54, in turn quoting *Cromer* at ¶ 35-36. When a reviewing court is presented with an argument that a jury instruction incorrectly stated the law, the court must apply a mixed standard of review consisting of both a de novo review and an abuse of discretion review which examines the jury charge as a whole and determines "whether the jury charge probably misled the jury in a matter materially affecting the complaining party's substantial rights." *Dodridge* at ¶ 56, citing *Huish* at ¶ 54, in turn citing *State v. Rutledge*, 2019-Ohio-3460, ¶ 31 (10th Dist.). "A criminal defendant has the right

to expect that the trial court will give complete jury instructions on all issues raised by the evidence." *State v. Howard*, 2007-Ohio-6331, ¶ 26 (4th Dist.).

{¶9} However, both parties herein concede that no objection was made to the erroneous jury instruction at trial. An appellate court " 'will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.' " *State v. Awan*, 22 Ohio St.3d 120, 122 (1986), quoting *State v. Childs*, 14 Ohio St.2d 56 (1968), paragraph three of the syllabus. *See also* Crim.R. 30. Appellate courts may, however, consider a forfeited argument using a plain-error analysis. *State v. Shields*, 2023-Ohio-2331, ¶ 72 (4th Dist.). Crim.R. 52(B) states: "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." It is the defendant's burden to "establish that an error occurred, it was obvious, and it affected his or her substantial rights." *See also State v. Fannon*, 2018-Ohio-5242, ¶ 21 (4th Dist.). The Supreme Court of Ohio recently reaffirmed that it has " 'interpreted [the third] aspect of the rule to mean that the trial court's error must have affected the outcome of the trial.' " *State v. Bond*, 2022-Ohio-4150, ¶ 17, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶10} Importantly, "[t]he Supreme Court of Ohio has found that an erroneous jury instruction does not meet the plain error threshold unless, ' "but for

the error, the outcome of the trial clearly would have been otherwise." ' " *State v. Brock*, 2024-Ohio-1036, ¶ 30 (4th Dist.), quoting *State v. McCown*, 2006-Ohio-6040, ¶ 38 (10th Dist.), in turn quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph two of the syllabus; *State v. Cunningham*, 2004-Ohio-7007, ¶ 56, citing *State v. Underwood*, 3 Ohio St.3d 12 (1983), syllabus. Furthermore, "[n]otice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

{¶11} Appellant, however, attempts to remove the charging error from the traditional plain error analysis, which requires a showing that the outcome of the trial was affected, by arguing that the error below constituted a structural error, which does not typically require a showing of prejudice. A structural error " '[a]ffects the framework within which the trial proceeds,' rather than being 'simply an error in the process itself.' " *State v. Tabor*, 2017-Ohio-8656, ¶ 15 (4th Dist.), citing *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017), in turn quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). Structural error has been recognized only in limited circumstances involving fundamental constitutional rights which include 1) the denial of counsel to an indigent defendant; 2) the denial of counsel of choice; 3) the denial of self-representation at trial; 4) the denial of a public trial; and 5) the failure to instruct the jury that the accused's guilt must be proved beyond

a reasonable doubt. *State v. West*, 2022-Ohio-1556, ¶ 26, citing *Weaver v. Massachusetts*, *supra*, at 295-296; *United States v. Davila*, 569 U.S. 597, 611.

{¶12} "[A] structural error that a defendant objects to at trial ordinarily mandates ' "automatic reversal," ' 'regardless of the error's "actual effect on the outcome." ' " *Tabor*, *supra*, at ¶ 15, quoting *Weaver*, *supra*, at 299, in turn quoting *Arizona v. Fulminante*, *supra*, at 310; *see also State v. Adkins*, 2025-Ohio-2833, ¶ 19 (4th Dist.). " 'The structural-error-automatic-reversal rule exists "to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial." ' " *Adkins* at ¶ 19, quoting *Tabor* at ¶ 15, in turn citing *Weaver* at 295. Even so, an accused who does not object to structural error at trial is generally not entitled to an automatic reversal. This is because appellate courts' holdings should " 'foster rather than thwart judicial economy by providing incentives ... for the defendant to raise all errors in the trial court—where, in many cases, such errors can be easily corrected.' " *Tabor*, *supra*, at ¶ 19, quoting *State v. Perry*, 2004-Ohio-297, ¶ 23.

{¶13} Appellant relies extensively on *State v. Bond*, *supra*, in support of his argument that the error in instructing the jury constituted a structural error which would render him exempt from the required showing that the outcome of the trial

would have been different but for the error.[2] Of importance, the Court in *Bond* clarified that structural errors, although generally exempt from a showing of prejudice, are still subject to a plain error analysis when no objection was made to the error at the trial court level. *Bond* at ¶ 17. Although the *Bond* Court explained that an outcome-determinative inquiry for determining the prejudice prong of the plain-error analysis is not necessarily the exclusive means of finding that a substantial right was affected when dealing with the unique nature of structural errors, it made no findings indicating that a charging error constitutes structural error that would exempt it from a traditional plain error analysis.

{¶14} Further, two years after the *Bond* decision was issued, the Court decided *State v. Gasper*, 2024-Ohio-4782. *Gasper* involved a defendant's failure to object to a jury instruction at trial. *Id.* at ¶ 14. In analyzing the question before it, the Court clearly stated that "[a] defendant who fails to object to jury instructions waives all but plain error." *Id.* The Court went on to apply the traditional plain error analysis, ultimately finding Gasper had not established that he had suffered prejudice. *Id.* at ¶ 15. Importantly, the Court failed to issue any findings suggesting that a jury instruction error constitutes structural error.

[2] The structural error alleged in *Bond* related to the closure of the courtroom during trial and made no findings regarding the provision of erroneous jury instructions. *Bond* at ¶ 1.

{¶15} In light of the foregoing, we reject appellant's arguments that the charging error below constituted a structural error. Furthermore, because appellant failed to object to the charging error, we find he has waived all but plain error, the application of which requires that a substantial right was affected, which has been interpreted to mean that the outcome of the trial would have been different but for the error.

Legal Analysis

{¶16} Appellant sets forth two issues under his first assignment of error. The first issue presented is as follows:

> The trial court committed plain error when it instructed the jury on a repealed definition of recklessness for Child Endangering. That definition was repealed by the legislature in 2014, and Armstrong's criminal liability turned on whether he acted recklessly as it is currently defined.

The second issue presented is as follows:

> Trial counsel was ineffective for failing to object to the jury instruction on Child Endangering that used a repealed recklessness definition. Armstrong was prejudiced because the parties disputed recklessness at trial and the new definition reduced the subjective-perception of the risk but altered the risk required for criminal liability.

Plain Error

{¶17} Appellant was charged with three counts of endangering children, all first-degree misdemeanors under R.C. 2919.22 (A), which provides, in pertinent part, as follows:

> No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a child with a mental or physical disability under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

Although the statute fails to expressly include the required mens rea for commission of the offense, it has been held that reckless is the required mens rea. *See State v. Wilson*, 2024-Ohio-2951, ¶ 16 (4th Dist.), citing *State v. McGhee*, 79 Ohio St.3d 193, syllabus (1997). *See also* R.C. 2901.21(C)(1) ("When language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if the person acts recklessly.").

{¶18} R.C. 2901.22(C) defines the mens rea of reckless. Prior to 2015 the statute provided as follows:

> A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.

R.C. 2901.01(7) defines the term "risk" and states that " '[r]isk' means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist."

{¶19} However, R.C. 2901.22(C) was revised in 2014 and beginning in 2015 now defines the mens rea of reckless as follows:

> A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

R.C. 2901.01(8) defines the term "substantial risk" and states that " '[s]ubstantial risk' means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist."

{¶20} Thus, prior to 2015, in order to demonstrate a mens rea of reckless, the State was essentially required to prove that a defendant *perversely* disregarded a *known risk*. Beginning in 2015 and continuing to the present, the State is now required to prove that a defendant *disregarded* a *substantial and unjustifiable risk*. As such, the level of disregard required to complete the act was lowered from a perverse disregard to simply a disregard. Further, the risk element was changed from a "known risk" to a "substantial and unjustifiable risk." In essence, this change meant that rather than perversely disregarding the significant possibility that one's conduct may cause a certain result or circumstance, it now means that one must simply disregard the strong possibility (which the definition specifies is more than a significant possibility) that one's conduct may cause a certain result or

circumstance. In other words, the level of disregard has been lowered while the risk level has been raised from a significant possibility to a strong possibility.

{¶21} The State concedes that the jury was improperly instructed under the prior version of the statute. However, the State points out that although the error was made, the jury was still instructed on the definition of "substantial risk," which is an independent element of the offense itself. Thus, having been instructed under the prior definition of reckless, the jury determined that appellant perversely disregarded, rather than simply disregarded, the risk present to his children by breaking down a bedroom door into the room where they were located. Because a perverse disregard is a higher standard than simply a disregard, we find there is no prejudice and thus no plain error related to this portion of the jury instruction.

{¶22} We likewise find no plain error regarding the remainder of the instruction. Although the jury was erroneously instructed that appellant was required to have perversely disregarded a known risk, as opposed to a substantial and unjustifiable risk, we find appellant's conduct satisfied either level of risk. This is due, in part, to our determination under appellant's next assignment of error that his convictions for endangering children were supported by sufficient evidence. Furthermore, as argued by the State, even though the jury was improperly instructed that the definition of reckless required the disregard of a "known risk" rather than a "substantial and unjustifiable risk," the jury was

separately instructed on the term "substantial risk," as it was a separate element of the offense. Thus, in finding appellant guilty of endangering children, the jury had to find that appellant 1) recklessly, 2) created a substantial risk to the health or safety of one or more children, by 3) violating a duty of care, protection or support. Because the jury separately found that appellant created a substantial risk as a stand-alone element of endangering children, it likely would have also concluded that substantial risk existed as part of the definition of the mens rea of reckless. Thus, we cannot conclude that but for the error in the jury instructions, the outcome of the trial would have been different. Accordingly, we find no plain error occurred with respect to the jury charge.

Ineffective Assistance of Counsel

{¶23} Appellant next contends under this same assignment of error that his trial counsel provided ineffective assistance when he failed to object to the erroneous jury instructions. However, App.R. 12(A)(2) and 16(A)(7) both required appellant to separately argue each assignment of error. Here, because appellant did not assign error based upon ineffective assistance of counsel, we decline to address this argument except to say that even if we had considered the argument, our finding that there was no plain error under the first part of this assignment of error would be outcome determinative to the argument that appellant received ineffective assistance of counsel. *See State v. Barnes*, 2025-Ohio-1967, ¶

50 (12th Dist.) This is because both plain error and ineffective assistance counsel arguments require a showing of prejudice in order to be successful *Id.* *See also State v. Bond, supra*, at ¶ 21-22 (observing that the prejudice required to demonstrate deficient performance by counsel and the "prejudice prong" of the plain error analysis have "been described in the same way").

{¶24} In light of the foregoing, we find no merit to the arguments raised under appellant's first assignment of error. Accordingly, it is overruled.

ASSIGNMENT OF ERROR II

{¶25} In his second assignment of error, appellant contends that the State elicited insufficient evidence to convict him of first degree-misdemeanor endangering children under R.C. 2919.22(A). Appellant argues that the presence of Tylenol pills on the floor in the home as a result of the incident did not create a substantial risk to each child, particularly the older children. He also argues that the "dislodged fiberwood door" did not create a substantial risk to the children. The State responds by arguing that because the three-year-old child brought a handful of pills to the deputy while he was on scene evidences the fact that the pills created a substantial risk to the child's safety, despite the fact that the child had been taught not to swallow pills. The State's brief does not address the sufficiency of the evidence relating to the presence of Tylenol as to the other two, older children. However, the State argues that the "situation with the door most certainly

created a substantial risk to the health or safety of the children," discounting appellant's "theory that breaking a door over your children's head which is only blocked by their mother who stepped between it is somehow not a substantial risk to their health or safety[.]"

Standard of Review

{¶26} Whether sufficient evidence exists to support a conviction is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In reviewing a challenge to the sufficiency of evidence, "[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." (Citations omitted). *State v. Smith*, 80 Ohio St.3d 89, 113 (1997). In making that determination, an appellate court will not weigh evidence or assess the witnesses' credibility. *State v. Walker*, 55 Ohio St.2d 208, 212 (1978). "Rather, we decide whether, if believed, the evidence can sustain the verdict as a matter of law." *State v. Richardson*, 2016-Ohio-8448, ¶ 13. Therefore, a court must conduct "a review of the elements of the charged offense and a review of the state's evidence." *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.), citing *State v. Williams*, 2011-Ohio-6267, ¶ 25 (1st

Dist.); *State v. Bennett*, 2019-Ohio-4937, ¶ 46 (3d Dist.); *State v. Wells*, 2022-Ohio-3793, ¶ 32 (4th Dist.).

Legal Analysis

{¶27} Appellant was convicted of three counts of endangering children in violation of R.C. 2919.22(A). As set forth above, endangering children is defined in section (A) of R.C. 2919.22, in pertinent part, as follows:

> No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a child with a mental or physical disability under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

"Substantial risk" is defined as a "strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." R.C. 2901.01(A)(8).

{¶28} Appellant concedes that he was the father of the children and that he owed them a duty of care. On appeal, he has limited his sufficiency challenge to "i) whether the Tylenol pills created a substantial risk to each child, and ii) whether the dislodged fiberwood door created a substantial risk to each child." The State has responded by addressing the presence and accessibility to the Tylenol pills as to only the youngest child, who was three years old at the time of the incident and was the child who approached the responding officer while holding a handful of pills. The State argues that appellant's actions related to the Tylenol posed a

substantial risk to the three-year-old, despite the fact that the child's mother testified that he had been taught not to swallow pills. However, the State did not address how the presence of the pills posed a substantial risk to the other children.

{¶29} The State instead focuses on appellant's actions in breaking down the bedroom door over the body of the children's mother while the children were located in the room with her. In support of his contention that there was no substantial risk to all of the children from the "dislodged fiberwood door," appellant characterizes the incident as one where the children were simply observers to the violence that occurred between himself and their mother, arguing that the altercation between the adults "occurred in the hallway and living room * * * [and] did not extend into the bedroom – where the children were in their beds." He argues that although he "used force to dislodge the fiberwood doors [sic] from its frame, he never passed the threshold into the room" and that he did not "touch a child or touch his girlfriend as she held or shielded a child." Appellant argues that the State's only argument is that the door "could have fallen on a child," but that because it did not, the element of substantial risk was not sufficiently proven. Appellant claims that no substantial risk was demonstrated because the State failed to elicit evidence regarding where the beds were located in relation to the door and which beds the children were sitting on.

{¶30} The State responds by arguing that the children were more than just bystanders and that they were nearly hit with the door that appellant "busted down around them, only protected by the Victim standing between the door and the children." The State relies on evidence in the record in the form of trial testimony of the children's mother and Deputy Gainer, who testified regarding how small the room was and that it was small enough for the door to hit the bed when falling inward. The State also references testimony of the children's mother which explained that appellant knew the children were in the room with her and that the door hitting her is what stopped it from hitting the children, who were on the bed. The State also points to photos that were admitted into evidence showing the size of the room and the door off of its hinges. The State ultimately argues that appellant "disregarded a substantial risk that his actions in busting the door down had a strong possibility of harming the health or safety of his children."

{¶31} " 'A child endangering conviction may be based upon isolated incidents or even "a single rash decision" in which a parent recklessly puts his or her child's health or safety at risk.' " *State v. Wilson*, 2024-Ohio-2951, ¶ 17 (4th Dist.), quoting *State v. Lucas*, 2024-Ohio-842, ¶ 66 (8th Dist.), in turn quoting *State v. James*, 2000 WL 1843196, *2 (12th Dist. Dec. 18, 2000). "However, the State must present 'some evidence beyond mere speculation as to the risk of harm that could potentially occur due to a single imprudent act.' " *Wilson* at ¶ 18,

quoting *Middletown v. McWhorter*, 2006-Ohio-7030, ¶ 11 (12th Dist.), in turn citing *State v. Caton*, 137 Ohio App.3d 742, 745 (1st Dist. 2000). "The trier of fact cannot 'make an inference upon an inference in order to transform a speculative risk into a substantial risk.' " *Wilson* at ¶ 18, quoting *McWhorter* at ¶ 11. Nonetheless, "[c]hild endangering cases 'are intensely fact-specific and, therefore, do not easily lend themselves to comparison to other child endangering cases.' " *Wilson* at ¶ 27 (4th Dist.), quoting *Cuyahoga Heights v. Majors*, 2014-Ohio-3326, ¶ 26 (8th Dist.).

{¶32} Bearing all of this in mind, we agree with the State's arguments regarding the substantial risk appellant created by breaking down a bedroom door attached to the small bedroom where his three children were located. The citations to the transcript made by the State in support of its arguments related to the positioning of the children, the size of the room, and the manner in which the door was broken down are supported by the record. Appellant seems to suggest that because the door did not actually hit the children, the State failed to prove the element of substantial risk. However, substantial risk is just that, a risk. It does not require certainty and the endangering children statute does not require that a child actually be injured. It only required that appellant create a substantial risk to the health or safety of his children, which he clearly did when he used such force against the bedroom door that he knocked it off its hinges and propelled it into the

room where his children were being shielded from his actions by their mother. *See Wilson*, *supra*, at ¶ 19 (where this Court affirmed convictions for endangering children after finding the appellant recklessly created a substantial risk to the health or safety of the four young children in her care by leaving them in a car unattended, despite the fact that no harm actually came to the children, who were described as "fine" and not in need of any medical assistance upon being spotted by law enforcement); *see also State v. Lucas*, 2024-Ohio-842, ¶ 68 (8th Dist.) (upholding a conviction for endangering children where, in the context of domestic dispute between the appellant and the mother of his child, the appellant discharged a firearm into a wall of the residence where his biological child was present).

{¶33} Appellant's arguments that the door was made of hollow fiberwood, that the children were merely bystanders to the violence, and that the altercation "did not extend into the bedroom – where the children were in their beds" is disingenuous based upon this set of facts and we find his argument to be wholly without merit. Contrary to appellant's arguments, the altercation did extend into the bedroom where the children were located when he made the decision to break the door down, forcing it off of its hinges and into the room.

{¶34} In light of the foregoing, and after viewing the evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. As a

result, appellant's convictions for endangering children were supported by sufficient evidence. We reach this conclusion even assuming, arguendo, that there may have been insufficient evidence to support his convictions based upon his actions which caused several Tylenol pills to end up in the hands of his three-year-old child. Appellant's actions with respect to breaking down the bedroom door alone constituted a sufficient basis for his convictions as to all three children and on all three counts. Thus, appellant's second assignment of error is also overruled.

{¶35} Accordingly, having found no merit to the assignments of error raised by appellant, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.