[Cite as *State v. Patterson*, 2026-Ohio-4295.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
FAIRFIELD COUNTY, OHIO

STATE OF OHIO, Plaintiff - Appellee -vs- PHILLIP D. PATTERSON, Defendant - Appellant	Case No. 2025 CA 00032 Opinion And Judgment Entry Appeal from the Fairfield County Court of Common Pleas, Case No. 2024 CR 353 Judgment: Affirmed in Part, Reversed in Part Date of Judgment Entry: October 28, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: R. KYLE WITT, Fairfield County Prosecuting Attorney by MARK A. BALAZIK, for Plaintiff-Appellee; COLIN E. PETERS, for Defendant-Appellant.

Montgomery, J.

{¶1} Defendant-Appellant, Phillip Patterson, appeals from the judgment of the Fairfield County Court of Common Pleas, after a jury convicted him of felonious assault with a gun specification. For the reasons below, we AFFIRM IN PART, and REVERSE IN PART.

STATEMENT OF THE CASE

{¶2} This case stems from an incident between Defendant-Appellant, Phillip Patterson, and Brian Decker, that occurred on July 26, 2024. On August 8, 2024, Defendant-Appellant, Phillip Patterson ("Appellant"), was indicted for one count of Felonious Assault in violation of R.C. 2903.11, a felony of the second degree. He pled not guilty. On April 3, 2025, a Superseding Indictment was filed alleging a one-year firearm specification in violation of R.C. 2941.141 and a forfeiture specification pursuant to R.C. 2941.1417 regarding two firearms. Appellant pled not guilty. The case proceeded to a jury trial; the jury returned a guilty verdict for Felonious Assault and a one-year firearm specification. The trial court separately ordered forfeiture of the firearms.

{¶3} On August 11, 2025, the trial court held a sentencing hearing. At that hearing, the parties discussed the Ohio Supreme Court's decision in *State v. Logan,* 2025-Ohio-1772, and whether *Logan* required a mandatory prison term for felonious assault because of the firearm specification. The trial court agreed with the State's position and sentenced Appellant to a one-year mandatory prison term for the firearm specification, consecutive to a two-year definite mandatory minimum term for the Felonious Assault, and a three-year indefinite term. Sent. Tr. 27-28. Appellant timely appealed.

STATEMENT OF FACTS

{¶4} The record supports the following facts. Justina Patterson ("Ms. Patterson") and Appellant were in the process of getting a divorce. Ms. Patterson described the deterioration of the marriage. Appellant moved to a spare bedroom in their home in 2023, out into a camper that summer, and she filed for divorce in March 2024. She claimed to have started dating Brian Decker ("Decker") in September 2024 but had been involved with him

prior to that. Ms. Patterson testified that on July 26, 2024, Appellant missed a scheduled Zoom hearing regarding the divorce. Sometime later, Ms. Patterson received voicemails from Appellant threatening Decker. Tr. 246-250. The voicemails include Appellant using extreme profanity and repeatedly asking Decker to "face me." *Id.* The voicemails were introduced at trial without objection. *Id.* The State also introduced text and Instagram messages from October 2023 in which Appellant threatened Decker's life if Decker ever came to their marital home. Ms. Patterson testified that she had previously shown these messages to Decker, making him aware of the threats to his life.

{¶5} Decker similarly testified that he received several phone calls from Appellant on the day in question. During the last call, Decker stated that Appellant mumbled something and then hung up. Fearing that Appellant was on his way over, and with his teenage son at home, Decker grabbed a baseball bat and a folding lawn chair and sat approximately 100 yards down his long driveway. Decker told his son to remain inside. Decker testified that he sat in his lawn chair for approximately 20-30 minutes before he saw Appellant driving in his Ford pickup truck. Appellant initially passed Decker's home before reversing and proceeding down the driveway.

{¶6} Decker snapped a few photos as Appellant came towards him. Decker testified that Appellant drove down the driveway at a high rate of speed before turning his hands toward Decker. Decker ran toward the nearby woods and claimed that the truck passed only inches from his shoulder before hitting trees and a vine, which caused the truck to flip over. Decker called 911. Decker further testified regarding Appellant's previous threats to Decker's life and that he made a police report to prevent Appellant from coming near his home. On cross-examination, Decker denied that he invited Appellant to his house to fight.

{¶7} Firefighter Lieutenant John Layton, Medic Jamie Jones, and Medic Sunwoo Kim of the Pleasant Township Fire Department were the first responders at the scene. Lt. Layton testified that on arrival, he was informed that a vehicle was flipped upside down, someone was likely inside, and there were possibly weapons. Lt. Layton found Appellant inside the flipped truck, upside down on the roof, semi-conscious, and very emotional. Lt. Layton testified that Appellant said, "he was [having sex with] my wife for three years, the court system has no justice." Tr. 80. Lt. Layton further testified that when Appellant crawled out from his truck, he heard Appellant say he was trying to run over Decker. *Id.* Medics transported Appellant to the ambulance and then to the area hospital. Lt. Layton prepared an EMS patient report and gave it to the hospital upon Appellant's arrival. The EMS report contained Appellant's comment to Lt. Layton that Appellant was trying to run over Decker. Lt. Layton prepared a separate written incident report that did not include Appellant's comment.

{¶8} Medic Jones testified that when Appellant was placed on the cot, Appellant said he was "going to kill him no matter what." Tr. 93. Medic Jones testified that both Appellant and Decker were yelling back and forth at each other while medics were tending to Appellant. Tr. 94. He did not hear Appellant specifically say he was going to run over Decker with the truck. Medic Kim testified he heard Appellant say to Decker, "I will fuck you up," but he did not hear him say he was going to run over Decker. Tr. 104, 108. Brian Decker Jr. testified that he heard Appellant say, "This isn't over, that's my wife, I'll be back." Tr. 98.

{¶9} Deputy Benjamin Roderick arrived on scene. Deputy Roderick testified that he found a pistol lying on the roof of the overturned truck, and that it was locked and loaded, meaning the magazine was loaded, a round was in the chamber, the hammer was cocked

back, and the safety was engaged. Tr. 70-73. Deputy Roderick testified that the firearm could be fired almost "immediately." Tr. 73. Deputy James Guseman also arrived on scene. Deputy Guseman took photos that were admitted as evidence, including photos of Appellant's overturned truck, tire marks on the driveway, tire marks in the grass toward the trees/woods, the 1911-style pistol found inside the truck, and a beer can from inside the truck. Tr. 37-42. Guseman testified that the lawn chair where the alleged victim claimed he was positioned was approximately one hundred yards from the road.

{¶10} Michael Barber ("Barber") with Barber's Towing testified that he towed Appellant's truck to the tow lot. Barber subsequently flipped the truck back to its upright position. Barber then found a second firearm on the passenger side floorboard of Appellant's truck. Barber notified the Sheriff's Office. Detective Joseph Jenkins recovered the pistol, a Glock 43 9mm, and testified that it had a loaded magazine with a round in the chamber. Tr. 125-129. Detective Jenkins testified that the firearm was "prepared to fire." Tr. 129. The parties stipulated that both firearms recovered from Appellant's truck were owned by Appellant and were fully operable firearms. There is also no dispute that Appellant was the driver of the truck, that the truck overturned near the wooded area on Decker's property, and that Decker and Appellant continued to exchange words as Appellant was assisted out of his truck and as medics were tending to Appellant. As stated, after the presentation of the evidence, the jury deliberated and ultimately found Appellant guilty of felonious assault and a one-year firearm specification.

ASSIGNMENT OF ERRORS

{¶11} "I. THERE WAS INSUFFICIENT EVIDENCE FOR CONVICTION, IN VIOLATION OF DUE PROCESS AS GUARANTEED BY THE FOURTEENTH

AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

{¶12} "II. APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, IN VIOLATION OF HIS RIGHT TO DUE PROCESS AS GUARANTEED BY THE OHIO CONSTITUTION AND THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

{¶13} "III. THE TRIAL COURT ADMITTED IRRELEVANT AND UNFAIRLY PREJUDICIAL EVIDENCE IN VIOLATION OF THE RULES OF EVIDENCE, WHICH PREJUDICED APPELLANT AND VIOLATED HIS RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS."

{¶14} "IV. THE TRIAL COURT'S FAILURE TO PROPERLY INSTRUCT THE JURY PREJUDICED APPELLANT AND VIOLATED HIS RIGHT TO DUE PROCESS AS GUARANTEED BY THE UNITED STATES AND OHIO CONSTITUTIONS."

{¶15} "V. TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO IMPERMISSIBLE EVIDENCE AND FLAWED JURY INSTRUCTIONS, IN VIOLATION OF DUE PROCESS OF LAW AND EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION.

{¶16} "VI. THE MANDATORY ASPECT OF THE TRIAL COURT'S TWO-YEAR PRISON SENTENCE FOR FELONIOUS ASSAULT IS CONTRARY TO LAW."

1&2) Sufficiency and Manifest Weight of Evidence

{¶17} In the first and second assignments of error, Appellant claims (1) his conviction for felonious assault is not supported by legally sufficient evidence and is against the manifest weight of the evidence, and (2) the conviction for the firearm specification under R.C. 2941.141 is against the weight of the evidence. Appellant's arguments are without merit.

{¶18} Essentially, "sufficiency is a test of adequacy," that challenges whether the state's evidence has created an issue for the jury to decide regarding each element of the offense. *State v. Thompkins,* 78 Ohio St.3d 380, 386 (1997). The test for sufficiency of the evidence 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." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89, 102 (1997), fn. 4; *State v. Worley,* 2021-Ohio-2207, ¶ 57. A sufficiency-of-the-evidence challenge asks whether the evidence is "legally sufficient to support the jury verdict as a matter of law." *State v. Lang*, 2011-Ohio-4215, ¶ 219.

{¶19} Weight of the evidence addresses the evidence's effect of inducing belief. *Thompkins* at 387; *State v. Williams*, 2003-Ohio-4396, ¶ 83. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established. *Thompkins* at 387. When a court of appeals reverses a judgment of a trial court as against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the fact finder's resolution of conflicting testimony. *State v. Jordan*, 2023-Ohio-3800; *Thompkins* at 387; *Williams,* ¶ 60. The reviewing court must

determine whether the jury clearly "lost its way and created such a manifest miscarriage of justice" that the conviction cannot stand, and a new trial must be ordered. *Id.*, quoting *State v. Group*, 2002-Ohio-7247, ¶ 77 (citations omitted). Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *State v. Dotson*, 2017-Ohio-5565, ¶ 1 (5th Dist.).

{¶20} 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; *In re Z.C.*, 2023-Ohio-4703, ¶ 14. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the [trier of fact] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland,* 10 Ohio St.3d 77, 80 (1984). In determining whether a witness is credible, the trier of fact is in the best position to consider inconsistencies in testimony, as well as the witnesses' demeanor and manner of testifying. *Dotson*, ¶ 50. Moreover, a defendant is not entitled to a reversal on manifest weight grounds simply because there was inconsistent evidence presented at trial. *Id.*; *State v. Raver*, 2003-Ohio-958, ¶ 21 (10th Dist.). If the evidence is susceptible to one or more interpretations, a reviewing court must interpret it in a manner consistent with the verdict. *Dotson*, ¶ 49.

{¶21} "Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency." *State v. McCrary,* 2011-Ohio-3161, ¶ 11 (10th Dist.), citing *State v. Braxton*,

2005-Ohio-2198, ¶ 15 (10th Dist.) (noting that "a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.") (other citation omitted); *State v. Winbush,* 2017-Ohio-696, ¶ 58 (2d Dist.). As a result, the determination that a judgment is supported by the weight of the evidence will also be dispositive of sufficiency. *State v. Farra,* 2022-Ohio-1421, ¶ 50 (2d Dist.).

{¶22} Regarding felonious assault, R.C. 2903.11(A) provides: "No person shall knowingly do either of the following: "* * * (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance." The evidence presented at trial demonstrates that on July 26, 2024, after Appellant missed his divorce hearing, Appellant made angry, threatening calls to both Ms. Patterson and Decker. According to Decker's testimony, Appellant drove to Decker's house, raced approximately 100 yards down Decker's driveway, drove off-road toward Decker as Decker ran towards the trees/woods, causing his truck to overturn, and barely missed hitting Decker. Photographs taken at the scene depict tire tracks in the grass leading toward the woods, where Decker testified he ran. Approximately ten minutes later, while Appellant remained in his overturned truck, medics arrived on scene. As Appellant was climbing out of his truck, several witnesses heard Appellant continue to threaten Decker. Decker was also yelling comments back at Appellant. Due to the intense situation, medics quickly moved Appellant to the ambulance and transported him to the hospital.

{¶23} Appellant also had two loaded firearms in his truck during this time. Lt. Layton found one firearm at the scene, after helping Appellant out of his truck. The firearm was loaded, and had "the hammer cocked to the rear, the safety on." Tr. 70, 72. The prosecutor asked "[w]hat is the significance [of] this style of pistol having a live round in the

chamber and the hammer cocked back?" Deputy Roderick answered that it could be fired almost immediately. Tr. 73. After the truck was towed to a tow lot owned by Barbers Towing, owner Michael Barber moved the truck with a forklift and flipped it back over. Barber discovered a second firearm in plain sight on the truck's passenger side floorboard. Detective Jenkins later examined the firearm and just like the pistol, it was loaded and "prepared to fire." Tr. 129.

{¶24} Appellant argues that Decker and Lt. Layton lack credibility. However, witness credibility remains an issue for the trier of fact who is in the best position to consider inconsistencies in testimony, as well as the witnesses' demeanor and manner of testifying. Appellant also complains that other than Lt. Layton, no other witnesses heard Appellant specifically state that he was trying to run Decker over with his truck. This argument fails considering the testimony from multiple witnesses who heard quite threatening statements from Appellant towards Decker. Medic Jones testified that he heard Appellant say, "I'm going to kill him no matter what." Tr. 93. Medic Kim testified he heard Appellant tell Decker, "I will fuck you up." Tr. 101-104. And Brian Decker Jr. heard Appellant say, "This isn't over, that's my wife, I'll be back." Tr. 277. Based on all the evidence presented, the jury could reasonably conclude that the elements of felonious assault were met and that Appellant knowingly attempted to cause Decker physical harm with a deadly weapon.

{¶25} Regarding the firearm specification under R.C. 2941.141, Appellant maintains the verdict is against the weight of the evidence because Appellant's guns were "merely incidentally in the vehicle." R.C. 2941.141(A) provides that "[i]mposition of a one-year mandatory prison term upon an offender * * * is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm

on or about the offender's person or under the offender's control while committing the offense."

{¶26} Appellant claims the guns had nothing to do with his conduct that day and were not on his person or under his control. To the contrary, the evidence demonstrates that two loaded firearms were recovered from Appellant's truck, the very truck that Appellant drove to Decker's home and raced down the driveway towards where Decker was sitting. The testimony was clear that both firearms were ready to fire. The firearms were discovered loose in the truck, and considering that the truck was overturned, it is reasonable to conclude that one or both were easily accessible to Appellant. Thus, the jury could reasonably conclude that one or both firearms were on or about Appellant's person or under Appellant's control at the time of the offense. The record simply fails to suggest the jury lost its way, and we will not second-guess the jury's determination. Because there was more than sufficient evidence to convict the Appellant and the verdicts are not against the weight of the evidence, Appellant's first and second assignments of error are overruled.

3) Admission of Evidence

{¶27} In his third assignment of error, Appellant argues that certain threatening messages towards Decker were irrelevant and unfairly prejudicial (1) phone calls to Ms. Patterson on the day in question; (2) text and Instagram message from October 2023; and (3) Decker's testimony regarding prior messages. We disagree.

Phone calls to Ms. Patterson on the day in question

{¶28} Generally, an appellate court need not consider any error that was not brought to the trial court's attention at a time when the error could have been avoided or corrected. *State v. Haudenschild*, 2024-Ohio-407, ¶ 15 (5th Dist.); *State v. Williams*, 51 Ohio St.2d 112, 117

(1977). Accordingly, a claim of error in such a situation is usually deemed to be waived absent plain error. *See* Crim.R. 52(B).

{¶29} Under the plain-error doctrine, a reviewing court will intervene only under exceptional circumstances to prevent injustice. *Haudenschild*, ¶ 17, citing *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus ("Notice of plain error * * * is to be taken with the utmost caution, under exceptional circumstances and only to prevent a miscarriage of justice"). To prevail, Appellant must establish that an error occurred, that the error was obvious, and that there is a reasonable probability that but for the error, the outcome of the trial would have been different. *State v. Bailey*, 171 Ohio St.3d 486, 488 (2022).

{¶30} Here, the State was required to prove that Appellant knowingly caused or attempted to cause physical harm to Decker. The trial court admitted Appellant's threatening calls to Ms. Patterson on the day in question to demonstrate Appellant's state of mind and intent. Thus, Appellant cannot demonstrate any obvious error. Even if Appellant could demonstrate obvious error, there is no "reasonable probability" that the outcome of the trial would have been different. There was significant additional evidence of Appellant's guilt in the form of photographs and eyewitness testimony. Indeed, the testimony alone from multiple witnesses could reasonably convince a jury to conclude that Appellant intended to harm Decker.

Prior Messages from October 2023

{¶31} The State also presented evidence of text and Instagram messages from nine months earlier in which Appellant made serious threats towards Decker. Ms. Patterson testified regarding those messages. Appellant objected to the introduction of the messages

and Ms. Patterson's testimony.[1] The trial court conducted a side bar conference with counsel, outside the presence of the jury, and ultimately determined the evidence was admissible. Appellant maintains that this evidence was unduly prejudicial and painted Appellant as aggressive, angry, and intending to hurt Decker. Appellant contends that Appellant's repeated threats about Decker, communicated via Ms. Patterson, and requests for her to allow him to "face" him, rise to the level of acts generally prohibited by Evid. R. 404 (character evidence). We disagree.

{¶32} Appellate courts review challenges to the admissibility of evidence under an abuse of discretion standard, provided an objection is made at trial. *State v. Smith*, 2019-Ohio-3257, ¶ 15 (1st Dist.); *State v. Ocanas*, 2023-Ohio-951, ¶ 29 (5th Dist.); *In re S.H.W.*, 2016-Ohio-841, ¶ 17 (2d Dist.). A trial court has broad discretion in determining the admissibility of evidence, so long as such discretion is exercised in line with the rules of procedure and the rules of evidence. *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271 (1991); *State v. Echols,* 2023-Ohio-2206, ¶28 (1st Dist.), affirmed by *State v. Echols,* 2024-Ohio-5088 ("The admission of evidence lies within the broad discretion of a trial court, and a reviewing court should not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice."); see also *State v. Issa*, 2001-Ohio-1290, (2001). An abuse of discretion implies more than an error in judgment; it is arbitrary, capricious, or unreasonable. *State v. Coriell*, 2023-Ohio-4113, ¶¶ 30-31 (5th Dist.).

{¶33} Evid.R. 404 is titled "Character evidence not admissible to prove conduct; Exceptions; Other crimes, Wrongs, or Acts" and provides in part:

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[1] Prior to her testimony, defense counsel moved to prohibit introduction of these messages as they were too far removed in time and not relevant to Appellant's state of mind at the time of the incident. Defense counsel objected again during her actual testimony.

(A) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, subject to the following exceptions:

* * *

(B) Other Crimes, Wrongs or Acts.

(1) *Prohibited Uses*. Evidence of any other crime, wrong or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice*. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

See also State v. Hartley, 2025-Ohio-3048, ¶ 20 (5th Dist.).

{¶34} The rule prohibits evidence of a defendant's other crimes, wrongs, or acts when the only value of the evidence is to demonstrate the defendant acted in accordance with his character. *State v. Smith*, 2020-Ohio-4441, ¶ 36. However, said evidence may be admissible for legitimate purposes, such as to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, or lack of accident." Evid.R. 404(B)(2). "The key is that the evidence must prove something other than the defendant's disposition to commit certain acts." *State v. Hartman*, 2020-Ohio-4440, ¶ 22; *State v. Tibbetts*, 2021-Ohio-132, ¶¶ 34-35; *Echols*, ¶ 28.

{¶35} In *Hartley*, this Court reiterated the Ohio Supreme Court's three-part analysis for determining the admissibility of other acts evidence. *State v. Hartley*, 2025-Ohio-3048, ¶ 23 (5th Dist.), citing *State v. Williams*, 2012-Ohio-5695, ¶ 20. The first step is to consider

whether the evidence is relevant under Evid.R. 401. If relevant, the second step is to consider whether the evidence is presented to prove the character of the accused to show activity in conformity therewith, or whether it is presented for a legitimate purpose, such as those stated in Ohio Evid.R. 404(B). *Id.* The third and final step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *Id.*

{¶36} Here, the transcript reveals that defense counsel implied throughout trial that both Decker and Appellant wanted to, in essence, settle the score, meaning both Appellant's and Decker's state of mind and intent were at issue during trial. The State introduced the prior messages to explain Decker's state of mind and actions in grabbing a bat and sitting in his driveway. The evidence also demonstrates Appellant's state of mind, his intent to harm Decker, and his motive for driving to Decker's home. Thus, assuming the evidence falls under the purview of Evid.R. 404 as a prior bad act, the messages were introduced for reasons other than to show that Appellant acted in conformity therewith. As such, the trial court did not act arbitrarily, unreasonably, or unconscionably in allowing the introduction of Appellant's prior threatening messages.

Decker's Testimony regarding threats

{¶37} Appellant also argues that Decker's testimony regarding previous text message threats by Appellant and a corresponding police report were unduly prejudicial and should have been excluded. Although Appellant makes an argument regarding lack of authentication of the police report, defense counsel did not object to the testimony or evidence and thus, our review is limited to plain error.[2] There is simply no reasonable probability that the jury verdict

[2] Appellant acknowledges that this testimony passed without objection and is subject to plain error review.

would be different without the testimony. Indeed, because Ms. Patterson's testimony regarding the messages was properly admitted as relevant, Decker's testimony and how those messages affected him were not unduly prejudicial. Appellant's third assignment of error is overruled in all respects.

4) Jury Instruction – Plain Error Standard of Review

{¶38} In his fourth assignment of error, Appellant argues (1) the jury instruction regarding the element of "attempt" was improperly confusing to the jury; and (2) the jury instruction in response to the jury's question regarding the firearm specification was likewise improper. Appellant goes on in his Brief to explain what would have been more helpful to the jury.

{¶39} Appellant acknowledges that defense counsel did not object to any jury instructions at trial. Under Crim.R. 30(A), "[o]n appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection." *State v. Owens*, 2020-Ohio-4616, ¶ 7. When a defendant fails to object, he waives all but plain error on appeal. *Id.*, citing *State v. Diar,* 2008-Ohio-6266, ¶ 127. Appellant must establish that an error occurred, that the error was obvious, and that there is a reasonable probability that but for the error, the outcome of the trial would have been different. *Bailey* at 488.

{¶40} "The purpose of jury instructions is to properly guide the jury" in deciding questions of fact based on the applicable substantive law. *Griffis v. Klein*, 2005-Ohio-3699, ¶ 48 (2d Dist.). "A court must give all instructions that are relevant and necessary for the jury to weigh the evidence and discharge its duty as the factfinder. Even so, it is clear that there

must be a limit. No purpose is served, for instance, by requiring courts to present redundant jury instructions or instructions that are so similar to other instructions to be presented as to be confusing." *State v. Griffin*, 141 Ohio St.3d 392, 393 (2014). Jury instructions must be reviewed as a whole, meaning in totality with all other instructions given. *State v. Coleman*, 37 Ohio St.3d 286 (1988).

{¶41} Appellant first argues that it was unnecessarily confusing for the trial court to provide the "substantial step" language related to attempt in felonious assault. Appellant states:

> (A) A more straightforward attempt instruction is in the O.J.I. for Felonious Assault: "An 'attempt' occurs when a person knowingly engages in conduct that, if successful, would result in physical harm." 3 O.J.I. CR 503.11 (A)(6). Giving that instruction would have clarified for the jury the nature of the allegation and level of proof required in this case, which was not to do with substantial steps toward an offense, but whether Patterson was trying to injure Decker while driving the truck.
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> Appellant's Brief, p. 24.

However, the substantial step language was arguably favorable to Appellant, requiring a "substantial step" in attempting to cause harm, rather than simply attempting to cause harm. Thus, Appellant cannot demonstrate that any alleged error in fact prejudiced Appellant, as required for this court to recognize plain error.

{¶42} Regarding the firearm specification, Appellant asserts that the trial court gave an incomplete instruction, stating only that "the jury must find that the firearm was on or about Patterson's person or under his control while committing the offense." Tr. 333.

Appellant argues the trial court should have provided the following supplemental instruction: "On or about his/her person or under his/her control means that the firearm was on the defendant's person or so near to the defendant as to be conveniently accessible and within the defendant's immediate physical reach." The jury subsequently asked a question during deliberations for "Clarification of the term on or about his person or under his control." Tr. 348. Appellant argues that after the jury question, the trial court failed to provide the jury with accurate legal instructions because it did not use the language set forth in Ohio Jury Instructions and effectively lowered the burden of proof for the State on one of the critical issues in the case.

{¶43} A trial judge has broad discretion to answer a jury question with a supplemental instruction or direct the jury's attention to the correct jury instructions already provided. *State v. Kirin*, 2000 Ohio App. LEXIS 3661, *10; *State v. Carter*, 2004-Ohio-39, ¶ 48 (5th Dist.) ("When a jury requests further instruction, or clarification of instructions previously given, a trial court may exercise its discretion in determining the appropriate response"), citing *State v. Carter*, 72 Ohio St.3d 545 (1995). Here, after the jury question, the trial court consulted with defense counsel and agreed upon the following language: "On or about his person is defined as something being physically on a person or easily accessible to them."

{¶44} The language proposed by Appellant on appeal is substantively similar to the language used by the trial court. The phrase "easily accessible" means capable of being reached, used, or seen without difficulty. We conclude this language fully encompasses Appellant's concern and as such, the trial court fully discharged its duty to clarify the applicable law. To be clear, there is no reasonable probability that just because Appellant's

suggested instruction was not used the outcome of the trial is unreliable. Accordingly, Appellant's fourth assignment of error is overruled.

5) Ineffective assistance of counsel

{¶45} In his fifth assignment of error, Appellant asserts that trial counsel was constitutionally ineffective by failing to object to the introduction of threatening messages from the day of the offense, discussed above, and by agreeing to the above discussed jury instructions regarding "attempt" and the firearm specification instruction. Again, we disagree.

{¶46} A claim of ineffective assistance requires a two-prong analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to appellant. *Strickland v. Washington*, 466 U.S. 668 (1984) and *Mansfield v. Studer*, 2012-Ohio-4840 (5th Dist.). The second prong is whether the appellant was prejudiced by counsel's ineffectiveness. *Id.* at ¶¶ 48-51. To warrant a finding that trial counsel was ineffective, the petitioner must meet both the deficient performance and the prejudice prongs. *Id.*

{¶47} To show deficient performance, appellant must establish that "counsel's representation fell below an objective standard of reasonableness." *Strickland* at 688. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant in the Sixth Amendment. *Id.* at 687. Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the case, viewed as of the time of counsel's conduct. *Id.* at 689.

{¶48} Due to the "variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant," the

performance inquiry necessarily turns on "whether counsel's assistance was reasonable considering all the circumstances." *Strickland* at 689. At all points, "[j]udicial scrutiny of counsel's performance must be highly deferential." *Id.* Strategic or tactical decisions will not form the basis for a claim of ineffective assistance of counsel. *Id.* at 689; *State v. Clayton*, 62 Ohio St.2d 45, 48-49 (1980); *State v. Mason*, 82 Ohio St.3d 144, 157-58 (1998) (stating that an appellate court may not second guess a trial counsel's strategy decisions). The second prong requires a defendant to demonstrate in fact that counsel's actions prejudiced the defendant. In other words, there must be a reasonable probability that but for counsel's errors, the result of the proceedings would have been different. *Strickland* at 691-696; *Studer*, ¶ 61.

{¶49} Contrary to Appellant's assertions, a review of the record reveals that defense counsel zealously advocated on behalf of Appellant. Counsel objected to evidence when the circumstances warranted and when counsel did not object, the record demonstrates either thoughtful analysis by counsel – such as the jury instructions – or a strategic decision, i.e. the phone calls on the day in question. As fully set forth above, there was no basis for any objection to that specific evidence. Indeed, counsel objected to evidence or questioning during other parts of the trial and said objections were sustained. Counsel fully cross-examined witnesses, particularly Decker, and highlighted inconsistencies in Decker's version of events for the jury. Counsel also fully explored the theory that Appellant and Decker were equally at fault or that it was Decker who wanted to fight Appellant. The jury rejected those theories and arguments.

{¶50} Not only does counsel's performance not fall below any objective standard given the facts of this case, but – for the reasons fully discussed in this opinion - there is no reasonable probability that but for counsel's alleged errors, the result would have been

different. That appellate counsel may have done things a bit differently than trial defense counsel is insufficient to satisfy the strict standard under *Strickland* and its progeny. Thus, Appellant's fifth assignment of error is overruled.

6) Mandatory Prison Term – R.C. 2929.13(F)(8)

{¶51} We review felony sentences under R.C. 2953.08(G)(2). An appellate court may vacate or modify a felony sentence only if it clearly and convincingly finds either that the record does not support the sentencing court's findings under the enumerated statutes, or that the sentence is otherwise contrary to law. *State v. Marcum*, 2016-Ohio-1002, ¶ 23. Further, whether a trial court correctly applied a mandatory designation is a question of statutory interpretation, which this Court reviews de novo. *State v. Vanzandt*, 2015-Ohio-236, ¶ 6.

{¶52} Recently, in *Logan*, the Ohio Supreme Court reversed the Eighth District that determined the trial court did not have to impose a prison term for defendant's felony offense where a firearm specification was attached. *State v. Logan*, 2025-Ohio-1772. The Court held that R.C. 2929.13(F)(8) requires a trial court to impose a prison sentence on an offender convicted of an underlying felony offense that had a corresponding firearm specification. The court reasoned that a firearm specification is a sentencing enhancement, not a separate criminal offense. Therefore, when R.C. 2929.13(F)(8) requires a prison sentence for "any offense," it applies only to the underlying felony offense, not to the firearm specification.

{¶53} The State argues that *Logan* requires the underlying prison term for felonious assault to be "mandatory," meaning it is not subject to the reduction mechanisms in R.C. 2967.01. We disagree. Recently, and post-*Logan*, this Court analyzed the statute in conjunction with the recent Logan decision. *State v. Young*, 2026-Ohio-2603 (5th Dist.). In *Young*, appellant pled guilty to one count of Involuntary Manslaughter in violation of R.C.

2903.04 with an attached three-year firearm specification pursuant to R.C. 2941.145(A). The parties agreed to a prison sentence of thirteen years, three years on the firearm specification and ten years on the Involuntary Manslaughter conviction, to be served consecutively. The matter proceeded to sentencing.

{¶54} The State argued that the ten-year prison term on the Involuntary Manslaughter conviction was required to be designated mandatory - meaning not subject to reduction, by virtue of the *Logan* decision. The appellant argued that *Logan* required only that a prison term be imposed on the underlying felony offense but did not require that the term carry mandatory status. *Young*, ¶ 6. This Court first analyzed R.C. 2929.13(F), providing in pertinent part that the trial court "shall impose a prison term or terms" and "shall not reduce the term or terms * * * for any of the following offenses." Subdivision (F)(8) then specifies:

> (F)(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (B)(1)(a) of section 2929.14 of the Revised Code for having the firearm;
>
> *Young*, ¶¶ 8-9.
>
> This Court further stated:
>
> Recently, the Supreme Court of Ohio's decision in *State v. Logan*, 2025-Ohio-1772, 179 Ohio St.3d 302, 267 N.E.3d 667, addressed a certified conflict from the Eighth District Court of Appeals framed as follows: 'Does R.C. 2929.13(F)(8) require a mandatory prison term and preclude the imposition of community-control sanctions on an underlying felony when a defendant is

found guilty on a corresponding firearm specification?' *Id.* at ¶ 1. The trial court in *Logan* had imposed a prison sentence for the firearm specification and community control for the underlying felony. *Id.* at ¶¶ 5-6. Thus, the certified question, and the Court's answer, was directed at the threshold question of whether any prison term was required for the underlying felony at all, not at the further question of whether such a term, once imposed, is nonreducible through Chapter 2967.

The Court's holding reflects this limited scope: 'R.C. 2929.13(F)(8) requires a trial court to impose a prison sentence on an offender convicted of a felony offense that has a corresponding firearm specification.' *Logan* at ¶ 25. That holding requires imprisonment. It says nothing about whether the required prison term is mandatory in the defined R.C. 2929.01(X)(1) sense - meaning not subject to reduction. * * *

Young, ¶¶ 11-12.

Based on this analysis, and because Ohio courts must give effect to every word and clause of a statute to avoid rendering any provision meaningless or superfluous, we held:

Under our reading of R.C. 2929.13(F)(8), the limiting clause has independent, operative meaning: it confines the non-reduction mandate of R.C. 2929.13(F)(8) to the specification portion of the combined sentence, the prison term imposed under R.C. 2929.14(B)(1)(a) for having the firearm. The non-mandatory underlying felony term must be served as a prison sentence, consistent with *Logan*, but it remains subject to reduction mechanisms available under Chapter 2967. * * *

> R.C. 2929.13(F)(8) does not require that a prison term imposed on the underlying felony offense accompanying a firearm specification carry mandatory status precluding reduction mechanisms under Chapter 2967. Although *Logan* requires that a prison term to be imposed for the underlying felony, it does not require that term be designated mandatory within the meaning of R.C. 2929.01(X)(1). The limiting clause, * * * confines the non-reduction mandate of R.C. 2929.13(F)(8) to the specification term. The underlying felony sentence, while required to be a prison term by *Logan*, is not thereby rendered mandatory.
>
> *Young*, ¶¶ 14-16.

State v. Milner, 2026-Ohio-2904, ¶ 10 (5th Dist.) (following this Court's recent *Young* decision and holding that the trial court erred in imposing a mandatory 8-year prison term for the underlying felony offense of aggravated robbery accompanying the firearm specification).

{¶55} Therefore, we find that the trial court erred in concluding that R.C. 2929.13(F)(8) required it to designate the two-year prison term for felonious assault as a mandatory term not subject to reduction under Chapter 2967. Accordingly, appellant's sixth assignment of error is sustained.

CONCLUSION

{¶56} Appellant's first, second, third, fourth, and fifth assignments of error are overruled. The judgment of the Fairfield County Court of Common Pleas is affirmed in all respects related to assignments of error one through five.

{¶57} Appellant's sixth assignment of error is sustained. The judgment is reversed as to sentencing, and the matter is remanded for further proceedings consistent with this opinion.

{¶58} For the reasons stated in our accompanying Opinion, the judgment of the Fairfield County Court of Common Pleas is Affirmed in Part, and Reversed in Part.

{¶59} Costs to be split evenly among the Appellee and Appellant.

By: Montgomery, J.

Hoffman, P.J. and

Gormley, J. concur.