

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ADAM COY ROBERTS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY

Case No. 26 JE 0006

Criminal Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 23CR00157

BEFORE:

Katelyn Dickey, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed in part. Vacated in part.

Atty. Jane M. Hanlin, Jefferson County Prosecutor, and *Atty. Bernard C. Battistel*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee and

Atty. Aaron M. Meikle, for Defendant-Appellant.

Dated: October 1, 2026

DICKEY, J.

{¶1} Appellant, Adam Coy Roberts, appeals from the November 6, 2025 judgment of the Jefferson County Court of Common Pleas convicting him of felonious assault and inducing panic and sentencing him to prison following a jury trial. On appeal, Appellant raises three assignments of error: (1) his trial counsel rendered ineffective assistance; (2) his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence; and (3) the trial court erred in ordering forfeiture of his weapons and ammunition. For the reasons stated, Appellant’s first and second assignments of error are not well-taken and his third assignment of error has merit. The trial court’s judgment is affirmed in part and the forfeiture order is vacated.

FACTS AND PROCEDURAL HISTORY

{¶2} Appellee, the State of Ohio, prosecuted Appellant for events occurring in the early morning hours of September 7, 2023, at and around his residence on State Route 151 in Mingo Junction, Jefferson County, Ohio. The indictment charged two counts of felonious assault on peace officers, Lieutenant Kohl Liddick (“Lieutenant Liddick” or “Liddick”) and Deputy Tyler Yoho (“Deputy Yoho” or “Yoho”), together with a count of inducing panic.

{¶3} Specifically, on November 1, 2023, the Jefferson County Grand Jury returned a four-count indictment against Appellant: count one, felonious assault, a felony of the first degree in violation of R.C. 2903.11(A)(2), with a three-year firearm specification under R.C. 2941.145(A), alleging that the victim was Lieutenant Liddick of the Jefferson County Sheriff’s Department (“JCSD”); count two, felonious assault, a felony of the first degree in violation of R.C. 2903.11(A)(2), with a three-year firearm specification under R.C. 2941.145(A), alleging that the victim was Deputy Yoho of the JCSD; count three, inducing panic, a misdemeanor of the first degree in violation of R.C. 2917.31(A)(3); and count four, using weapons while intoxicated, a misdemeanor of the first degree in violation of R.C. 2923.15(A) and (B). Appellant was appointed counsel and pled not guilty at his arraignment.

{¶4} At the July 11, 2025 hearing, the State agreed not to introduce drug-use evidence and the trial court excluded pre-midnight drug use while admitting the earlier officer interaction.

{¶5} A jury trial was held on October 29, 2025 and October 30, 2025. Count four, using weapons while intoxicated, was nolle before trial began. The State’s theory was that Appellant fired more than 35 rounds over roughly 40 to 45 minutes from an elevated attic position in his home, striking near both officers, while no one other than law enforcement was outside the home and no officer returned fire. The defense previewed a competing account: that Appellant, believing intruders were trying to break in, called 9-1-1 repeatedly, fired warning shots into the ground, and neither knew nor could have known that the officers — who approached without lights or sirens and never announced themselves — were present, and that the charged shots were physically implausible.

{¶6} The witnesses testified in the following order: Sheriff Fred Abdella (“Sheriff Abdella” or “Abdella”), Deputy Yoho, Major Thomas Koehnlein (“Major Koehnlein” or “Koehnlein”), and Lieutenant Liddick for the State; William James Powers II (“Powers”) as the defense firearms expert; and Captain Sean Rath (“Captain Rath” or “Rath”) in the State’s rebuttal.

{¶7} Sheriff Abdella, the elected Sheriff of Jefferson County since February 2022, opened the State’s case with an overview of the incident and the physical evidence recovered. He testified that in the early morning of September 7, 2023, dispatch received calls reporting shots fired in the vicinity of 616 State Route 151, and that subsequent calls came from neighbors who felt shots might have been directed toward their residences. Deputy Yoho arrived first with Officer Starosciak of Wells Township, followed by Lieutenant Liddick and Deputy Cook.

{¶8} Sheriff Abdella described shots “ringing out and being fired indiscriminately” as officers worked to shut down the road, with Deputy Yoho and Officer Starosciak feeling they might be under fire as they approached, and Lieutenant Liddick moving to the west side of State Route 151 to close the road. (Jury Trial Tr., p. 89). Officers could not initially tell where in the house the shots originated, suspecting the front porch, the attic, or the back of the home, and a Steubenville Police drone with a FLIR (heat-signature) system was requested. Abdella recounted that as 9-1-1 attempted to reach the occupant to

advise that law enforcement was outside, he worked his way toward the house, called out “‘Sheriff’s Office[.]’” a shot was fired roughly 25 seconds after that announcement, and Appellant exited and surrendered without incident. (*Id.* at p. 91). Officers then cleared the home, confirmed no one else was inside, and obtained a search warrant before processing the scene.

{¶9} Sheriff Abdella testified affirmatively to several facts central to the State’s case: that no one other than law enforcement was outside the home; that he saw no one atop a U-Haul firing shots, no one attempting to enter the home, and no one kicking a back door; and that there were “[n]o intruders whatsoever[.]” (*Id.* at p. 92). He identified Appellant in the courtroom. Reading from the search warrant inventory (State’s Exhibit 1/1A), Abdella catalogued an extensive array of firearms and ammunition recovered from the home, including a 12-gauge American Tactical Bulldog shotgun, a Talon AR-15 (5.56/.223) rifle, a Ruger P95DC 9mm pistol, a Smith & Wesson M&P Shield 9mm, a Freedom Ordnance FX-9 9mm, numerous loaded magazines, and loose ammunition. Abdella testified that spent 9mm casings, three loaded shotgun rounds, and — per inventory Item 33 — 18 spent .223 casings, 12 spent 00-buck casings, and roughly 80 additional spent casings were found in the upstairs attic space near the window. He estimated roughly 110 to 112 spent casings in the attic, the majority 9mm. The firearms (State’s Exhibits 2-6) were admitted without objection.

{¶10} On cross-examination, defense counsel elicited a concession bearing on the felonious-assault counts: Sheriff Abdella was not on scene when either of the charged shots was allegedly fired, did not see or hear those shots, and had no firsthand knowledge of them beyond the reports and body-camera footage he later reviewed. Counsel used a packet of 13 scene photographs taken by the department in daylight (Defendant’s Exhibit A) to establish that numerous rounds had struck the grassy area and the bases of trees near the front porch, consistent with shots fired into the ground. Abdella agreed that most spent casings were located in the attic, that a Ziploc bag of miscellaneous casings (Item 25) came from a downstairs bedroom dresser, and that unfired ammunition (including boxes in a basement gun safe) had no bearing on whether the charged shots occurred. He acknowledged that he did not know of any evidence of shots fired toward Deputy Yoho’s position, and that while the photographed impacts were “obviously shorter”

than the roadway, he could not rule out that fragments or ricochets reached the road. (*Id.* at p. 113). He confirmed the department found no evidence of any shot reaching or crossing the road. In summary, Abdella conceded he did not see or hear the two shots at issue and did not know whether any evidence corroborated them.

{¶11} On redirect, Sheriff Abdella agreed that the impacts depicted in the defense photographs were far fewer than the roughly 110 casings recovered, leaving “fifty or sixty more shots” unaccounted for, and that ricocheted rounds could have traveled beyond the marked impact points. (*Id.* at p. 114).

{¶12} Deputy Yoho, a Jefferson County deputy since April 2018, was the first officer on scene and the officer named in count two. He testified that around 3:00 a.m., dispatch reported multiple shots fired near Dynasty Towing in the 600 block of State Route 151. He confirmed shots were being fired as he exited his vehicle. He also confirmed that he and Officer Starosciak localized the fire to a residence adjacent to their cover position. Yoho recounted that as he rounded the north side of a neighbor’s house to gain a better vantage point and made himself visible, he heard a shot and “a bullet whizzing over” his head — a sound he likened to a badminton — after which he retreated to cover. (*Id.* at p. 118). His body-camera video was admitted as State’s Exhibit 1B and played for the jury. Yoho confirmed it truly and accurately depicted the events and that he believed he was fired upon at least once.

{¶13} Deputy Yoho also supplied context predating the shooting: about 7:00 p.m. the prior evening (September 6), he had responded to the same residence after neighbors reported Appellant behaving erratically and searching for “MKULTRA,” and Appellant, describing a mental-health crisis, agreed to seek treatment and was transported to Trinity Medical Center West; that earlier encounter was cordial and non-confrontational. (*Id.* at p. 124). Yoho testified that he saw several muzzle flashes (with Officer Starosciak observing flashes through night-vision goggles), that he never saw anyone atop a U-Haul, no one attempting to enter the home, and no one on the property other than law enforcement, and that no officer fired a shot — so any shot heard on the body camera was fired by Appellant.

{¶14} On cross-examination, Deputy Yoho acknowledged he and Officer Starosciak parked near the 400 block and that his body camera did not activate until he

was already walking toward the scene, so the earliest moments were not recorded. As to the shot allegedly fired at Lieutenant Liddick, Yoho conceded he did not see it and, pressed repeatedly, could not identify from his own recollection which of the several shots was directed at Liddick, attributing his knowledge to radio traffic from Liddick rather than personal observation. As to the shot at himself, Yoho testified he did not see the shot and could not say where it was fired from within the house — only that the gunshot sound came from a westerly direction and he heard the whizzing overhead. Counsel established that Yoho was positioned at a neighbor’s house (not on Appellant’s property), roughly 198 feet from the attic window per a mapping exhibit; that he never announced himself and displayed no lights or sirens; and that he had no evidence Appellant or anyone else knew he was there. Yoho agreed he collected no evidence of the shot allegedly fired at him, was unaware of any ammunition or impact evidence in that direction, and that nothing struck the neighboring houses.

{¶15} Using a 9-1-1 call log (Defendant’s Exhibit F), counsel established that Appellant placed calls at 3:27, 3:30, 3:37, 3:40, 3:43, 3:54, and 3:55 a.m. — meaning Appellant had called five times before roughly 3:48 a.m., when Deputy Yoho believed the first contact with Appellant occurred. In one recording, Appellant admitted he was in the middle of a gun fight, followed by the operator telling him he was shooting at officers. On the final 9-1-1 call (Defendant’s Exhibit G), counsel drew out that Appellant could be heard yelling out the window for someone to announce themselves, stating the police were not here, asking whether a drone was flying, and saying he did not want to shoot them, after which he came down, exited unarmed, and told the Sheriff, “I called you guys[.]” (*Id.* at p. 163).

{¶16} On redirect, the State elicited that Deputy Yoho did not personally hear Appellant yell “[a]nnounce yourself” while on scene — hearing it only later on the 9-1-1 recording — and that any relay of Appellant’s request to identify came well after multiple shots had been fired. (*Id.* at p. 165). The State also played the 3:43 a.m. and 3:55 a.m. calls, on which gunshots are audible and Appellant is heard saying he was “in the residence shooting at them” and that he was “not trying to shoot them” (police) — not that he was shooting at the ground or into the air — while denying the truth of his statements that someone was on a U-Haul shooting at him and that people were breaking in the back

door. (*Id.* at p. 166-167). Yoho explained that calls sometimes route through Brooke County (West Virginia) based on cell-tower coverage, requiring transfer to Jefferson County.

{¶17} On re-cross, Deputy Yoho reaffirmed that he never announced himself or displayed lights, that he was at the neighbor’s property, that he knew of no one attempting to break in, and that he was not part of any follow-up investigation into the shot allegedly fired at him — such that “there was no evidence” of it “that [he] was aware of.” (*Id.* at p. 171). The trial court sustained objections to the State’s later attempts to ask whether anyone had a “right to shoot” at that distance. (*Id.* at p. 171).

{¶18} Major Koehnlein testified principally about the October 21 test-firing of the seized 12-gauge American Tactical Bulldog shotgun (State’s Exhibit 5). He said the weapon was not altered before testing and was fired with the same type of 00-buck (“nine-shot”) ammunition recovered from the home, in the presence of Captain Rath, both counsel, and defense expert Powers. (*Id.* at p. 175). Using a range finder, Koehnlein measured the distance at which the pellets reached the water at approximately 390 yards, testifying that the pellets, nine per shot, spread out and landed in the general area toward which he aimed.

{¶19} On cross-examination, Major Koehnlein estimated the pellet spread at that distance at roughly 15 to 30 feet, acknowledged this was his first time firing such a weapon, and agreed that hitting a target with all pellets at that range would be impossible given the spread. Koehnlein testified he arrived before Appellant was in custody but after the shots — positioned on the east side by the neighbor’s house with Deputy Yoho — and that there was no shooting while he was present and he saw no shots fired at any deputy, so he “really [didn’t] know anything about” the charged shots. (*Id.* at p. 179).

{¶20} On redirect, Major Koehnlein testified that he later used the range finder to measure the distance from the home to Lieutenant Liddick’s position at approximately 160 to 167 yards, and that pellet accuracy and grouping would be “tighter” at that shorter distance than at 390 yards. (*Id.* at p. 180).

{¶21} Lieutenant Liddick, the officer named in count one and a roughly ten-year member of the Jefferson County Special Response Team, provided the State’s most direct testimony on a charged shot. He testified that he drove past the reported address

intending to block the far (west) side of the roadway, and that as he passed the home he heard “several what I believe to be shots ring out, tracking my car,” a belief he held “strongly.” (*Id.* at p. 186). He described the home as set back on a large, elevated lot, with Appellant in a finished attic loft at the front facing the road — an elevated position atop already-elevated terrain. His body-camera video was admitted as State’s Exhibit 1C in which Deputy Yoho is heard warning “He’s shooting at you, 25” (Liddick’s unit number), to which Liddick responded, “Right, he is.” (*Id.* at p. 189). Liddick identified a muzzle flash on the video and testified that, as to one particular shot fired while he was outside his cruiser, he heard what he believed to be dirt — and now believes may have been shotgun pellets — landing around him immediately after the shot, in “[e]xtremely” close proximity, a sound he associated with no other shot that night. (*Id.* at p. 193).

{¶22} Through a “Photo Book” (State’s Exhibit 1K), Lieutenant Liddick narrated scene photographs, including U-Haul trailers parked near the roadway with apparent bullet holes, impact marks at the bases of trees, spent and loaded Black Aces Tactical 12-gauge shells, and the attic loft from where the State believed Appellant fired. He confirmed the 12-gauge ammunition matched the spent casings at the scene and the rounds used in the test-fire. He testified that, to his knowledge, no one other than law enforcement was on the property, no evidence corroborated anyone on a U-Haul or attempting to enter the home, no prior 9-1-1 calls reported intruders, no one had come forward in the two intervening years, and no officer fired any shot. Liddick also explained the Brooke County call-routing by cell-tower coverage and narrated a series of 9-1-1 calls (State’s Exhibits 1D–1I) time-stamped beginning at 3:05 a.m. Liddick further testified that, in a search conducted months later after Appellant’s release, officers recovered a small black pocketbook containing handwritten measurements “in paces” of areas around the home, some close to law enforcement positions on the night of the incident, including his own and Deputy Yoho’s approximate positions. (*Id.* at p. 210).

{¶23} On cross-examination, Lieutenant Liddick agreed the pocketbook was found months after the arrest — after Appellant had been charged and after a preliminary hearing — and reflected only approximate positions learned “after the fact[,]” not knowledge on the night in question. (*Id.* at p. 213). He agreed he knew nothing about the shot allegedly fired at Deputy Yoho beyond radio traffic. As to the shots at his own

vehicle, Liddick conceded he was driving and did not see them but rather he heard them. Counsel established through drone still-images and mapping exhibits (Defendant's Exhibits B, H, I) that the officers' initial parking position could not see Appellant's house due to a bend in the road, that neither Liddick nor Yoho saw the shot, and that Liddick's cover position was approximately 515.09 feet from the attic, across and beyond a long building. Liddick agreed he had positioned himself with the deliberate purpose of concealment, with no lights around and his headlights off to some degree, and could not say whether Appellant could see him. He acknowledged a shift in his account: on the body camera in the moment he called out "high powered rifle[.]" and did not then think "shotgun pellets"; only later, after searching the house and seeing the shotgun, did he conclude the shot was likely a shotgun. (*Id.* at p. 231). Liddick testified he briefly searched the area afterward for shotgun pellets but found nothing, that this search was not on body camera or in any report, and that to his knowledge he was the only person who looked.

{¶24} On redirect, Lieutenant Liddick testified he could not say where in the home Appellant was firing from as the cruiser drove past (attic, porch, or any window), that 00-buck disperses and would be "extremely difficult" to find in a wooded or gravel area, and that the .223 and 9mm rounds recovered could travel the distance to his position and kick up gravel producing a sound similar to buckshot landing — while conceding he did not know exactly which firearm was fired at him, his "best guess" being the shotgun. (*Id.* at p. 238).

{¶25} On re-cross, Lieutenant Liddick reaffirmed he found no .223 round, no 9mm round, and no pellets, could not say which type of projectile he heard, but was "absolutely, one hundred percent sure [he] heard something" fall. (*Id.* at p. 240).

{¶26} A final redirect confirmed the associated sound accompanied only that one shot.

{¶27} At the close of the State's case, the defense moved for judgment of acquittal under Crim.R. 29 on all counts, arguing insufficient evidence that Appellant knew the officers were present or that the charged shots occurred. The trial court overruled the motion, finding the officers' testimony — that Lieutenant Liddick heard a projectile impact

nearby and Deputy Yoho heard a bullet whiz past — sufficient, if believed, to support the verdicts, and that stopped traffic on the roadway supported the inducing panic count.

{¶28} The defense called Powers, owner of Powers Defensive Tactics (a gun shop and training center) with a military-police and law-enforcement background, who was admitted without objection as an expert on firearms and their capabilities. Powers described the seized shotgun as a semiautomatic, box-magazine-fed 12-gauge with an 18-inch barrel, the shortest barrel legally permitted, and the 9mm as an AR-style pistol. He opined the shotgun is designed for close-quarters self-defense. Reviewing the scene photographs (Defendant’s Exhibit A), Powers identified numerous ground divots consistent with rounds fired into the ground, tree-base impacts, and recoverable lead shrapnel, opining that where one fragment was found, more should be findable.

{¶29} As to the shot at Lieutenant Liddick, Powers offered several opinions. He opined the two holes in the white U-Haul trailer appeared to be ground ricochets rather than direct shots, based on how the metal deformed and on the wide spread and lost velocity of 00-buck at that distance, and that a fully bloomed tree stood between the attic and the trailer. As to the 515-foot shot over the long building, Powers opined that the shotgun’s accuracy is limited to roughly 50 to 60 yards, that beyond about 50 to 75 yards the pellets lose velocity and fall to earth without meaningful energy, and that a shot from the attic window would rain some pellets onto the long building’s roof — so one would expect impact evidence there. Powers testified the pellet spread at such range would exceed 20 feet and that it was “[h]ighly unlikely” pellets would travel more than 300-plus yards, though not strictly impossible. (*Id.* at p. 272). As to the shot at Deputy Yoho, Powers opined that from inside the house Appellant had no line of sight and would have had to fire through his own roof or wall, and that a shotgun blast toward Yoho would spread widely enough to strike the neighboring house, while a round passing over Yoho’s head should have struck the house behind him — such impact evidence being difficult but not impossible to find.

{¶30} On cross-examination, Powers acknowledged he was present at the test-fire, that he lased a tree at 390 yards near where a splash occurred in the lake, and that Lieutenant Liddick’s position (172 yards) was less than half that distance — though he criticized the test as unscientific because the weapon was hand-held at an upward angle

rather than bench-mounted and fired at measured paper targets. Powers conceded he was never given the actual firearm to inspect (examining only the empty casings), that not all shrapnel would necessarily be found, that hitting a moving vehicle in a short window would be “extremely difficult[,]” and that he was being paid for his time. (*Id.* at p. 280).

{¶31} On redirect, Powers opined that direction is difficult to determine from sound alone, and reiterated that a shot at Deputy Yoho — whether shotgun, 9mm, or rifle — would require firing through roofing material with no line of sight and would leave locatable impact evidence on the surrounding structures.

{¶32} On re-cross, Powers agreed that “just because a bullet isn’t found doesn’t mean it wasn’t shot[.]” (*Id.* at p. 286).

{¶33} In rebuttal, the State called Captain Rath, a 29-year law enforcement officer who responded to the scene, collected evidence, and took the outdoor scene photographs. Rath testified he arrived near the end of the incident, heard two gunshots as he exited his car, took cover, and observed Appellant taken into custody shortly thereafter. He testified to bullet holes in the U-Hauls positioned along State Route 151 almost directly in front of the house. The trial court permitted him to state whether he could determine the caliber responsible. Rath testified he could not attribute a specific hole to a specific weapon because three types of empty casings — .223, 9mm, and shotgun — were located at the scene by the upstairs window, all fired that night. As to the October 21 test-fire of the unaltered shotgun (State’s Exhibit 5) using the same type of ammunition, Rath testified the pellets hit the water at roughly 390 yards, in the general area toward which the shooter aimed, “[w]ithout question.” (*Id.* at p. 295).

{¶34} On cross-examination, Captain Rath acknowledged he did not fire the weapon himself (standing a short distance behind the shooter), and — over repeated questioning — declined to quantify the spread or to confirm that some pellets landed away from the aim point, testifying only that he saw the water disturbed in the direction the shooter aimed and could not say how many pellets landed where.

{¶35} Neither side offered sur-rebuttal and both rested.

{¶36} The trial court instructed the jury on felonious assault, the firearm specifications, the peace-officer specifications, and inducing panic. After the court completed its charge, it asked the parties whether there were additions or corrections.

The State answered, “No, your Honor.” (*Id.* at p. 352). Defense counsel answered, “No, sir.” (*Id.*).

{¶37} The jury returned a split verdict. On count one, the jury found Appellant guilty of felonious assault of Lieutenant Liddick and found the firearm specification proven; however, it found the State had not proven beyond a reasonable doubt that Appellant knew the victim was a peace officer. On count two, the jury found Appellant not guilty of felonious assault of Deputy Yoho. And on count three, the jury found Appellant guilty of inducing panic.

{¶38} Following the November 3, 2025 sentencing hearing, the trial court entered judgment on November 6, 2025, sentencing Appellant to the following: on count one, felonious assault, two years (minimum) to three years (maximum) in prison; on the firearm specification to count one, three years (mandatory) which must be served first; and on count three, inducing panic, six months which is to be served concurrently with count one and the firearm specification. The court granted Appellant 291 days of credit for time already served. The court ordered all weapons and ammunition are forfeited to the JCSD for use or sale but not destruction until after all appeals have been exhausted. The court also informed Appellant that he is subject to a mandatory period of post-release control of 18 months to three years. Appellant was also given notice of his lifetime weapons disability under Ohio and federal law.

{¶39} Appellant filed a delayed appeal and raises three assignments of error.

ASSIGNMENT OF ERROR NO. 1

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO REQUEST JURY INSTRUCTIONS ON SELF-DEFENSE AND DEFENSE OF RESIDENCE.

{¶40} In his first assignment of error, Appellant argues his trial counsel was ineffective because he failed to request jury instructions on self-defense and defense of residence.

“[T]he Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial.” *Strickland v. Washington*, 466 U.S. 668, 684, 104 S.Ct. 2052 (1984).

In order to demonstrate ineffective assistance of counsel, Appellant must show that trial counsel’s performance fell below an objective standard of reasonable representation, and prejudice arose from the deficient performance. *State v. Bradley*, 42 Ohio St.3d 136, 141-143, 538 N.E.2d 373 (1989), citing *Strickland* (, *supra*). Both prongs must be established: If counsel’s performance was not deficient, then there is no need to review for prejudice. Likewise, without prejudice, counsel’s performance need not be considered. *State v. Madrigal*, 87 Ohio St.3d 378, 389, 721 N.E.2d 52 (2000).

In Ohio, a licensed attorney is presumed to be competent. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). In evaluating trial counsel’s performance, appellate review is highly deferential as there is a strong presumption that counsel’s conduct fell within the wide range of reasonable professional assistance. *Bradley* at 142-143, citing *Strickland* at 689. Appellate courts are not permitted to second-guess the strategic decisions of trial counsel. *State v. Carter*, 72 Ohio St.3d 545, 558, 651 N.E.2d 965 (1995).

Even instances of debatable strategy very rarely constitute ineffective assistance of counsel. See *State v. Thompson*, 33 Ohio St.3d 1, 10, 514 N.E.2d 407 (1987). The United States Supreme Court has recognized that there are “countless ways to provide effective assistance in any given case.” *Bradley* at 142, citing *Strickland* at 689.

To show prejudice, a defendant must prove his lawyer’s deficient performance was so serious that there is a reasonable probability the result of the proceeding would have been different. *Carter* at 558. “It is not enough for the defendant to show that the errors had some conceivable effect on

the outcome of the proceeding.” *Bradley*, 42 Ohio St.3d 136 at fn. 1, 538 N.E.2d 373, quoting *Strickland* at 693. Prejudice from defective representation justifies reversal only where the results were unreliable or the proceeding was fundamentally unfair as a result of the performance of trial counsel. *Carter*, 72 Ohio St.3d at 558, 651 N.E.2d 965, citing *Lockhart v. Fretwell*, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993).

. . .

[A]n ineffective assistance of counsel claim cannot be predicated upon supposition. *State v. Watkins*, 7th Dist. Jefferson No. 07 JE 54, 2008-Ohio-6634, ¶ 15. Likewise, proof of ineffective assistance of counsel requires more than vague speculations of prejudice. *Id.* ¶ 55, citing *State v. Otte*, 74 Ohio St.3d 555, 565, 1996-Ohio-108, 660 N.E.2d 711.

State v. Rivers, 2019-Ohio-2375, ¶ 20-23, 27 (7th Dist.).

We thus refrain from second-guessing most of counsel’s decisions on what questions to ask and what arguments to make. See *State v. Goodwin* (Sept. 24, 2001), 7th Dist. No. 99CA220, citing *State v. Carter* (1995), 72 Ohio St.3d 545, 558, 651 N.E.2d 965. A defendant is not guaranteed the right to the best counsel who presents a flawless trial performance. *Id.*, citing *State v. Burley* (Aug. 11, 1998), 7th Dist. No. 93CA204. Tactical omissions or debatable trial tactics are generally deemed matters of trial strategy rather than error. *State v. Clayton* (1980), 62 Ohio St.2d 45, 47, 402 N.E.2d 1189.

State v. Baker, 2003-Ohio-7008, ¶ 12 (7th Dist.).

State v. Bunch, 2024-Ohio-5085, ¶ 29 (7th Dist.).

State v. Linde, 2025-Ohio-5209, ¶ 17 (7th Dist.).

{¶41} “Generally, the failure to request jury instructions is purely a matter of trial tactics and will not be disturbed upon review.” *State v. Herrington*, 9th Dist. Summit No.

25150, 2010-Ohio-6455, 2010 WL 5548620, ¶ 11, citing *State v. Clayton*, 62 Ohio St.2d 45, 47-49, 402 N.E.2d 1189 (1980).” *State v. Brown*, 2017-Ohio-7424, ¶ 21 (2d Dist.).

{¶42} The threshold question is not whether counsel could have requested instructions on self-defense and defense of residence, but whether the record entitled Appellant to them; if it did not, counsel’s failure to request them was neither deficient nor prejudicial. A defendant is entitled to a self-defense or defense of residence instruction only after satisfying a burden of production — producing evidence that “tends to support” that he used force in self-defense or in defense of his residence. R.C. 2901.05(B)(1). That burden is “not a heavy one and . . . might even be satisfied through the state’s own evidence[,]” but it is not satisfied by the mere discharge of a firearm during a frightening episode. *State v. Messenger*, 2022-Ohio-4562, ¶ 22. The accused must produce legally sufficient evidence on every element of the defense: that he was not at fault in creating the situation giving rise to the affray; that he had a bona fide and reasonable belief that he was in imminent danger of death or great bodily harm and that his only means of escape was the use of such force; and that he did not violate any duty to retreat. *See Id.* at ¶ 15-26. The trial court considers only the adequacy of that showing, not its persuasiveness, but the defendant must still come forward with evidence on each element. *State v. Palmer*, 2024-Ohio-539, ¶ 22. Where deadly force is used, the defense carries an additional requirement often omitted — that the force used was reasonable and proportionate to the perceived threat; force “so grossly disproportionate” as to show an unreasonable purpose to injure is not justifiable as self-defense. *State v. Reyes-Figueroa*, 2020-Ohio-4460, ¶ 27 (8th Dist.).

{¶43} Measured against that standard, the record here would not have supported the instructions. No one other than law enforcement was outside the home. Sheriff Abdella testified there were “[n]o intruders whatsoever,” that he saw no one atop a U-Haul firing shots and no one attempting to enter or kicking a door, and no officer approached the porch, entered the residence, or fired a shot during the roughly 40 to 45 minute episode. (Jury Trial Tr., p. 92). Appellant, firing from an elevated attic, discharged more than 35 rounds — leaving some 110 to 112 spent casings — at officers positioned roughly 198 feet and 515 feet away, none of whom was entering or threatening entry into his home. That is neither evidence of a bona fide belief in imminent danger nor evidence

of reasonable, proportionate force. Appellant does not, and could not, invoke the castle-doctrine presumption of R.C. 2901.05(B)(2), which arises only when the person against whom force is used is unlawfully and without privilege entering or having entered the residence. Here, the officers did neither. And because the broader burden-shifting rule of R.C. 2901.05(B)(1) is triggered only once the evidence tends to support each element of the defense, the State's beyond-a-reasonable-doubt burden to disprove justification never arose. *Palmer* at ¶ 19.

{¶44} Even setting aside the insufficiency of the evidentiary predicate, trial counsel's decision not to request the instructions was a reasonable, indeed a virtually compelled, matter of trial tactics that will not be disturbed upon review. See *Brown*, 2017-Ohio-7424, at ¶ 21 (2d Dist.). Self-defense is not a theory counsel could have added without cost, because a self-defense claim “presumes intentional, willful use of force to repel force or escape force” and thus “concedes [the defendant] had the purpose to commit the act, but asserts that he was justified”; consequently, “when an individual testifies that they did not intend to cause harm, such testimony prevents the individual from claiming self-defense.” (Citations omitted). *State v. Clay*, 2013-Ohio-4649, ¶ 48 (4th Dist.).

{¶45} Appellant's defense was the opposite of a justification. He maintained that the charged shots did not occur, could not have reached the officers, and were not knowingly fired in their direction. Trial counsel built that defense on the testimony of firearms expert Powers. Powers opined that the shotgun's pellets lost meaningful velocity well short of the officers' positions, that it was “[h]ighly unlikely” pellets traveled more than 300-plus yards, and that Appellant had no line of sight to Deputy Yoho and would have had to fire through his own roof or wall. (Jury Trial Tr., p. 272). To request an instruction telling the jury that Appellant intentionally fired at the officers to repel them — while simultaneously arguing that he could not and did not hit them and did not knowingly shoot at them at all — would have been internally contradictory and would have undermined the acquittal the defense actually secured on count two.

{¶46} Appellant's reliance on *State v. Wilson*, 2024-Ohio-776, does not overcome this presumption of sound strategy. Rather, it confirms it. The Supreme Court of Ohio in *Wilson* found counsel ineffective for omitting a self-defense instruction precisely because

self-defense was “the only defense [the defendant’s] testimony supported[,]” so that the omission “cannot be chalked up to trial strategy.” *Id.* at ¶ 27. Here, by contrast, trial counsel pursued a viable, evidence-backed theory of factual innocence, and a self-defense instruction would have cut against it, the situation *Wilson* distinguished, not the one it condemned. That the *Wilson* defendant’s passing suggestion that he “may not have been the shooter” did not save the omission is of no help to Appellant in this case, because that argument was contradicted by the defendant’s own admission that he fired, whereas Appellant’s misidentification-and-implausibility defense rested on affirmative expert proof. *Id.* at headnote 9.

{¶47} Appellant also cannot establish prejudice — the reasonable probability of a different result required by the second *Strickland* prong. The trial court instructed the jury on the “knowingly” element, and by convicting on count one, the jury necessarily found that Appellant was aware his conduct would probably cause harm to another — a finding fundamentally at odds with an accidental or warning-shot account and thus with the premise of the omitted defense. *See Clay*, 2013-Ohio-4649, at ¶ 39 (4th Dist.).

{¶48} Given the officers’ distant, non-entering positions, Appellant’s own 9-1-1 admissions that he was “shooting at them” rather than into the ground or air, and the volume and duration of the gunfire, there is no reasonable probability that an instruction requiring the State to disprove a justification the evidence never supported would have changed the outcome. (Jury Trial Tr., p. 166–167).

{¶49} Upon consideration, the record establishes trial counsel’s representation was constitutionally effective and did not affect Appellant’s rights. Counsel’s performance was neither deficient nor prejudicial. Appellant fails to demonstrate ineffective assistance of counsel. *See Strickland*, 466 U.S. 668 (1984).

{¶50} Appellant’s first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED BY DENYING APPELLANT’S MOTION FOR ACQUITTAL BECAUSE APPELLANT’S CONVICTIONS FOR FELONIOUS ASSAULT IN COUNT ONE AND INDUCING PANIC IN

**COUNT THREE ARE UNSUPPORTED BY SUFFICIENT EVIDENCE AND
ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.**

{¶51} In his second assignment of error, Appellant contends his convictions for felonious assault and inducing panic are not supported by sufficient evidence and are against the manifest weight of the evidence.

“When a court reviews a record for sufficiency, ‘[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.’” *State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

In determining whether a criminal 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 trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119. . .

The weight to be given to the evidence and the credibility of the witnesses are nonetheless issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact “has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page.” *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997).

State v. T.D.J., 2018-Ohio-2766, ¶ 46-48 (7th Dist.).

{¶52} “[C]ircumstantial evidence and direct evidence inherently possess the same probative value.” *State v. Biros*, 78 Ohio St.3d 426, 447 (1997), quoting *Jenks* at paragraph one of the syllabus.

{¶53} For the reasons addressed below, we determine the judgment is not against the manifest weight of the evidence and further conclude it is supported by sufficient evidence.

{¶54} Appellant takes issue with the guilty finding on count one, felonious assault, a felony of the first degree, in violation of R.C. 2903.11(A)(2), which states in part: “(A) No person shall knowingly . . . (2) [c]ause or attempt to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance.”

{¶55} R.C. 2901.22, “Culpable mental states,” provides in part:

(B) A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

R.C. 2901.22(B).

{¶56} Appellant also takes issue with the guilty finding on count three, inducing panic, a misdemeanor of the first degree in violation of R.C. 2917.31(A)(3), which states: “(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by . . . (3) [c]ommitting any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.”

{¶57} R.C. 2901.22(C) states:

(C) 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. 2901.22(C).

{¶58} Count one, felonious assault (regarding Lieutenant Liddick), required proof that Appellant knowingly caused or attempted to cause physical harm to another by means of a deadly weapon. See R.C. 2903.11(A)(2). Viewed in a light most favorable to the prosecution, the record permits a rational juror to find each element beyond a reasonable doubt. Liddick testified that shots tracked his cruiser as he drove past, and that he then saw a muzzle flash directed at him and heard a projectile land in “[e]xtremely” close proximity — testimony corroborated by his body-camera video, on which Deputy Yoho warns “He’s shooting at you, 25,” (Liddick’s unit number) and Liddick answers, “Right, he is.” (Jury Trial Tr., p. 189, 193). The surrounding circumstances confirm a knowing attempt to cause harm: Appellant fired more than 35 rounds over some 40 to 45 minutes from an elevated attic, leaving roughly 110 to 112 casings, while no one but law enforcement was outside and no officer returned fire. The “knowingly” element — awareness that conduct will probably cause a certain result — is further supplied by Appellant’s own 9-1-1 statements that he was in the middle of a gun fight and “shooting at them” (police), never that he was firing into the ground or air. (*Id.* at p. 166-167); see R.C. 2901.22(B).

{¶59} Appellant’s contrary arguments do not defeat sufficiency. This is not the mere pointing of a weapon as addressed in *State v. Brooks*, 44 Ohio St.3d 185 (1989). Rather, it is repeated, sustained fire in an officer’s direction coupled with contemporaneous admissions. The fact that no one was struck and no projectile was recovered is immaterial: R.C. 2903.11(A)(2) reaches an “attempt” to cause harm; circumstantial evidence carries the same probative force as direct; and the missing round is explained by the many unaccounted-for shots, likely ricochets, and the defense expert’s own concession that “just because a bullet isn’t found doesn’t mean it wasn’t shot[.]” (Jury Trial Tr., p. 286). Nor do the split findings undermine the conviction. The jury’s rejection of the peace-officer specification does not negate an element of the offense, which requires only a knowing attempt to harm “another,” and the jury separately found the

firearm specification proven. See R.C. 2903.11(A)(2); R.C. 2941.145(A). The acquittal with respect to the count involving Deputy Yoho rested on materially different evidence, including expert testimony that Appellant had no line of sight to Yoho. The differing verdicts show a jury that segregated the proof count by count — the mark of a discerning fact-finder, not one that lost its way.

{¶60} Count three, inducing panic, is likewise supported. The felonious assault sustained under count one furnishes the predicate offense, and the record shows serious public inconvenience or alarm to the public, distinct from the police: neighbors reported shots possibly directed toward their homes, shots rang out “indiscriminately,” and State Route 151 was closed during a lengthy episode of gunfire in a residential area at roughly 3:00 a.m. (Jury Trial Tr., p. 89); see R.C. 2917.31(A)(3). A rational juror could find that firing dozens of rounds into a neighborhood, with heedless indifference to the substantial risk of public alarm, satisfied R.C. 2917.31(A)(3). See R.C. 2901.22(C).

{¶61} The manifest weight challenge also fails. Although this court sits as a “thirteenth juror” on that inquiry, weight and credibility remain primarily for the trier of fact, and reversal is reserved for the exceptional case in which the evidence weighs heavily against conviction. See *State v. Richardson*, 2025-Ohio-3128, ¶ 56 (7th Dist.). The jury heard the officers’ testimony and recordings against the defense expert’s plausibility opinions and resolved the conflict in the State’s favor as to Lieutenant Liddick while acquitting as to Deputy Yoho — a reasoned resolution, not a miscarriage of justice, and one this court should not disturb by substituting its own judgment.

{¶62} Pursuant to *Jenks*, there is sufficient evidence upon which the jury could reasonably conclude beyond a reasonable doubt that the elements of felonious assault (count one) and inducing panic (count three) were proven. The trial court did not err in denying Appellant’s Crim.R. 29 motion. Also, the jury chose to believe the State’s witnesses. *DeHass*, 10 Ohio St.2d at paragraph one of the syllabus. Based on the evidence presented, as previously stated, the jury did not clearly lose its way in finding Appellant guilty of felonious assault (count one) and inducing panic (count three). *Thompkins*, 78 Ohio St.3d at 387.

{¶63} Appellant’s second assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED BY ORDERING FORFEITURE OF APPELLANT’S WEAPONS AND AMMUNITION WHERE THE INDICTMENT CONTAINED NO FORFEITURE SPECIFICATION, THE JURY RETURNED NO FORFEITURE VERDICT, AND THE STATE DID NOT COMPLY WITH OHIO’S CRIMINAL-FORFEITURE STATUTES.

{¶64} In his third assignment of error, Appellant asserts the trial court erred in ordering forfeiture of his weapons and ammunition because the indictment contained no forfeiture specification, the jury returned no forfeiture verdict, and the State did not comply with Ohio’s criminal forfeiture statutes.

{¶65} Whether the trial court had statutory authority to order criminal forfeiture presents a question of law that we review de novo. Ohio’s criminal-forfeiture scheme is codified in R.C. 2981.01 through 2981.14, and it prescribes an exclusive path: property may be forfeited “only by the inclusion of a forfeiture specification in the charging instrument or by the filing of a civil forfeiture action.” *State v. Mitchell*, 2022-Ohio-4355, ¶ 26 (1st Dist.), citing R.C. 2981.03. The specification requirement is mandatory and jurisdictional in effect.

{¶66} R.C. 2941.1417, “Specification concerning forfeiture of property,” states:

(A) Property is not subject to forfeiture in a criminal case unless the indictment, count in the indictment, or information charging the offense specifies, to the extent it is reasonably known at the time of filing, the nature and extent of the alleged offender’s interest in the property, a description of the property, and, if the property is alleged to be an instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense. The specification shall be stated at the end of the body of the indictment, count, or information and shall be in substantially the following form:

“SPECIFICATION (or SPECIFICATION TO THE FIRST COUNT).

The grand jurors (or insert the person’s or prosecuting attorney’s name

when appropriate) further find and specify that (set forth the alleged offender's interest in the property, a description of the property subject to forfeiture, and any alleged use or intended use of the property in the commission or facilitation of the offense)."

(B) The trier of fact shall determine whether the property is subject to forfeiture.

R.C. 2941.1417(A) and (B).

{¶67} R.C. 2981.04(A)(1) has the same effect, stating in part: "[p]roperty . . . may be forfeited . . . only if the defendant is convicted of . . . and the complaint, indictment, or information charging the offense . . . contains a specification of the type described in section 2941.1417 of the Revised Code . . ." R.C. 2981.04(B) requires that, where such a specification is charged, the trier of fact shall determine forfeiture if the State "proves by clear and convincing evidence that the property is in whole or part subject to forfeiture," with the court substituting for the jury only on the offender's motion.

{¶68} These procedures are strictly enforced because forfeitures "are not favored under Ohio law[.]" forfeiture statutes must be construed so as to avoid a forfeiture of property, and statutes in derogation of private property rights are "strictly construed against the state[.]" so that a forfeiture "will not be presumed." (Citations omitted). *State v. McMeen*, 2014-Ohio-5482, ¶ 13 (3d Dist).

{¶69} Measured against that framework, the forfeiture order cannot stand. The four-count indictment carried three-year firearm specifications under R.C. 2941.145(A), but a firearm specification is a sentencing enhancement, not a forfeiture specification. The indictment contained no specification of the type described in R.C. 2941.1417, identifying Appellant's interest in the weapons and ammunition, describing that property, and alleging its use as an instrumentality. No forfeiture allegation was submitted to the jury, the jury returned no forfeiture verdict, no verdict form described any property as subject to forfeiture, and no trier of fact found by clear and convincing evidence that the weapons or ammunition were forfeitable. Instead, after the verdict and at sentencing, the trial court ordered all weapons and ammunition forfeited to the JCSD for use or sale but not destruction until after all appeals have been exhausted. Because the indictment

contained no forfeiture specification, the trial court had no authority to order Appellant's weapons and ammunition forfeited. See *Mitchell*, 2022-Ohio-4355, at ¶ 26 (1st Dist.); *McMeen*, 2014-Ohio-5482, at ¶ 18 (3d Dist.); *State v. DeLong*, 2025-Ohio-2432, ¶ 77 (4th Dist.) (“[o]rdering forfeiture of property as part of a sentence is contrary to law if the State did not include a forfeiture specification in the indictment[.]”); R.C. 2941.1417; R.C. 2981.04.

{¶70} Nor does Appellant's lifetime weapons disability supply the missing authority. A disability may bar Appellant from lawfully possessing firearms, but it does not authorize the State to take ownership of the property and sell or use it without adhering to the forfeiture statutes. A firearm that is neither contraband nor proceeds becomes forfeitable only through the specification-and-determination procedure the statutes require. See *McMeen* at ¶ 16-19.

{¶71} Appellant's failure to object to the forfeiture at sentencing does not alter the outcome. An unpreserved forfeiture challenge is reviewed for plain error, *Mitchell*, 2022-Ohio-4355, but an order entered without statutory authority is contrary to law and is vacated notwithstanding the absence of an objection below. *DeLong* at ¶ 77.

{¶72} Appellant's third assignment of error has merit. The portion of the November 6, 2025 judgment ordering forfeiture of Appellant's weapons and ammunition to the JCSD is vacated. See, e.g., *State v. Kennedy*, 2020-Ohio-1128, ¶ 12, 18 (5th Dist.).

CONCLUSION

{¶73} For the foregoing reasons, Appellant's first and second assignments of error are not well-taken and his third assignment of error has merit. The November 6, 2025 judgment of the Jefferson County Court of Common Pleas convicting Appellant for felonious assault and inducing panic and sentencing him to prison following a jury trial is affirmed in part and the forfeiture order is vacated.

Robb, J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the first and second assignments of error are not well-taken and the third assignment of error has merit. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed in part and the forfeiture order is vacated. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.