

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115829
	:	
v.	:	
	:	
MARIO COLVIN,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-702309-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Halie Turigliatti, Assistant Prosecuting Attorney, *for appellee*.

Grant W. MacKay, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant Mario Colvin (“Colvin”) appeals his convictions for felonious assault and having weapons while under disability. He raises the following errors:

Assignment of Error No. 1

The jury erred by entering verdicts of guilt that were against the manifest weight of the evidence, in derogation of [Colvin's] right to due process of law, as protected by the Fourteenth Amendment to the United States Constitution as well as Article I, Section 16 of the Ohio Constitution.

Assignment of Error No. 2

The trial court committed structural error and violated [Colvin's] due process rights when it deviated from the written jury instructions and provided erroneous instructions to the jury.

Assignment of Error No. 3

[Colvin] was denied his right to the effective assistance of counsel when he [failed] to request an accident jury instruction.

{¶ 2} For the reasons that follow, we affirm the convictions.

I. Factual and Procedural History

{¶ 3} In June 2025, a grand jury convened and indicted Colvin for the following charges alleged to have occurred on May 25, 2025: attempted murder, felonious assault causing serious physical harm, felonious assault with a deadly weapon or dangerous ordinance, and domestic violence against A.K. (Counts 1, 2, 3, and 5); having weapons while under a disability (Count 4); and three counts of endangering children against D.C., Da.C., and S.A. (Counts 6, 7, and 8). Counts 1, 2, and 3 included one- and three-year firearm specifications, and a forfeiture specification for a Taurus G2C pistol.

{¶ 4} In October 2025, a jury trial commenced. We limit our review to the testimony that is relevant to this appeal.

{¶ 5} A.K. testified that she dated Colvin on and off since 2010 and stopped dating him in 2022, although they maintained a sexual relationship. The two had three children together. All A.K.'s children considered Colvin a father figure and called him "dad." A.K. described their relationship after they split up as mostly coparenting the children, which was "relatively positive." A.K. also testified that she lived in Cleveland, Colvin lived in Mansfield, and Colvin would visit with the children every day or every other day. Nevertheless, except for once right after she moved to Cleveland, Colvin never stayed overnight in the house, and when he did come over, he usually stayed on the porch.

{¶ 6} A.K. indicated that they both engaged in relationships with other people when they were dating and when they were separated. At the time of the shooting, A.K. had a boyfriend ("Boyfriend"). She also believed that Colvin knew she was dating but did not know that she was dating Boyfriend.

{¶ 7} The day before the shooting, A.K. had a cookout for Colvin's son, which Colvin attended. According to A.K., they did not make plans to see each other the following day. The next day, she spent time with family, before returning home, accompanied by Boyfriend. A.K. denied calling Colvin that day or arranging to meet him. However, A.K. indicated her son used her phone to call Colvin to see if he would pick him up from practice and take him to the movies. Colvin called her phone several times, but she did not answer the phone. The State introduced cell phone records, which showed calls from Colvin to her at 10:45 a.m. and 10:46 a.m. There were calls from her phone to Colvin that A.K. testified were made by her son

at 12:48 p.m., 5:47 p.m., and 6:25 p.m. Subsequently, A.K. received approximately nine calls from Colvin between 9:18 p.m. and 11:25 p.m. She denied answering those calls.

{¶ 8} A.K. and Boyfriend went to her bedroom on the second floor. At some point there was a light tap on her door. A.K. called out asking who it was, and one of her children answered. A.K. responded that she was coming. There was another tap on the door a few minutes later, and she responded, “Here comes mommy.” A.K. started putting on her clothes and then heard a heavy tap higher on the door. When she opened the door, she was looking down expecting to see her five-year-old but saw Colvin’s shoes instead. When she looked up, she asked Colvin what he was doing in her house. He responded by “mugging” her in the face and pushing her into the room, saying, “Bitch, I knew you had a nigga in here.” A.K. testified that she pushed him back and the two then began to “shuffle” back and forth. Colvin was trying to see past her while they exchanged words. Per A.K., Colvin wanted to know why she had somebody there with his children. She responded by telling him, “You sleep with anything, anybody. You have kids everywhere. We’re not together. You weren’t even invited to my house.”

{¶ 9} After they exchanged words, A.K. saw a beam of light, a laser, at the top of her chest. When she looked down and saw the laser, she pushed Colvin and he pushed her back. She went to push him again and felt warmth hit her hand. They continued to tussle, and she felt a burn in her stomach and in her private area. She started to fall towards Colvin, and Colvin helped her to the floor. Once she was on

the ground, she kept repeating, “You shot me. [Colvin], you shot me.” Colvin just stared at her. A.K. believed that Boyfriend moved at that point because Colvin threatened to kill him if he moved again. Colvin then turned back to A.K. who testified that the laser hit her in her eye. A.K. testified that she saw the laser emanate from Colvin’s right pocket. He was wearing a gray and white Nike jogging suit and gray and white high-top tennis shoes. After he aimed the laser at her eye, her children intervened and said, “Dad, no, please.” She later clarified that it was D.C. who said “Dad, no, please.” A.K. testified that Colvin looked up, saw that all the children were standing in the doorway, got up and ran down the stairs and out the door.

{¶ 10} A.K. did not see the gun, but she knew it was a gun based on the laser. A.K. noted that she had seen a gun in Colvin’s possession with a laser sight and identified a picture of the gun for the record.¹ The firearm was later identified as a Taurus G2C. She also testified that Colvin took the gun everywhere and previously threatened her without pointing the weapon at her directly, just by pulling it out. Furthermore, she denied that she owned or possessed a gun, nor did she shoot herself.

{¶ 11} A.K. testified that the bullet grazed her hand and then hit her stomach, bladder, intestines, and vagina. The bullet was lodged in her body, and the

¹ While multiple witnesses testified about a laser, no one described the purpose of a laser or how it works with a firearm. Additionally, no laser was recovered during the investigation.

doctors were unable to remove it. She was in the hospital for approximately one month and spent an additional week in a rehabilitation facility.

{¶ 12} Approximately three weeks after the incident, A.K. looked at her phone and saw that Colvin had texted her the night of the shooting. The texts were as follows:

9:31 p.m. I was asleep when you called. You don't have to call back. Enjoy the night.

9:37 p.m. I don't think I can do this anymore [A.K.] between your job and your stalker gay friends and your boyfriend you don't have enough time for me. You want to deal with me when it look good for you or you talk to me when it's convenient for you I can't do this no more.

9:41 p.m. You see how you won't answer my call but when you on the phone with me you quick to put me on hold to answer. I'm not important to you and I can't continue not to be important I'm not going to continue to sell myself short because we have kids.

9:44 p.m. This is just like yesterday why would I want to come and go with you and your gay friends that don't make sense [L.] keeps sneaking up here to see you even though she got somebody she messed with her and [Al.] still doing their thing. And once again your gay ass white friend can smoke my weed but not even speak to me brush up against my ass and not even say excuse me you let your friends disrespect me in my face and you never say nothing.

9:45 p.m. Why would I want to sit around a bunch of dyke chicks everybody there trying to suck your ass except your sister and her girlfriend why would I want to be there.

{¶ 13} On cross-examination, A.K. confirmed that she described the firearm as a "Glock" when she was interviewed by the police but admitted she did not know what type of gun it was; she only knew what Colvin told her it was. Moreover, she

acknowledged the picture of the gun she identified did not have a laser attachment. She admitted that she married someone else in 2016, that his name is tattooed on her hand, and that she was still seeing Colvin at that time. She alleged that Colvin “ran her husband off” and admitted that she had gotten “aggressive” with Colvin’s girlfriends but denied running any of them off.

{¶ 14} A.K. denied scheduling a date with Colvin at the cookout for him to come over the next day. Their only plans were for Colvin to take their son to practice and the movies. The defense then asked A.K. to give greater detail about the shoving before the shooting. She maintained that Colvin was pushing her with one hand and that his other hand was in his right pocket. She denied pushing him where the gun was in his pocket. She could see the laser coming through the pocket and described the light as “faint.” The bedroom lights were off, and the only light came from the television. She was wearing a pink shirt, and she could see the green light from the laser on her chest. She admitted that she never saw the gun in Colvin’s hand, but she did see the back of it when he ran away.

{¶ 15} Next, D.C., who had just turned 16, testified. She testified that A.K. is her mother and Colvin is her siblings’ father. D.C. had known Colvin all her life. He was a father figure to her, and she called him, “dad.” She testified that she saw Colvin, “every day or if not every other day.” Her bedroom was in the attic and she shared it with her one-year-old cousin, whom she cared for and referred to as “her baby.” D.C. testified that A.K.’s room was one floor below hers. On the evening of the incident, she went to bed between 9 and 10 p.m. because the baby was ready to

go to sleep. D.C. was not expecting Colvin at the home that evening. While in her room, she testified that she realized Colvin was in the house because she could hear a lot of “wrestling and tussling” going on downstairs in her mother’s room. She could hear arguing and Colvin using “foul” language with A.K. D.C. heard her mother say, “No, no.” Then she heard Colvin say, “Shut the fuck up” and “Oh, this is what you in here doing? You in here with another man?”

{¶ 16} She heard a gunshot, rushed downstairs, opened the door that led to the attic, and saw Colvin to her right, standing over A.K. Based on the blood on the floor, she believed A.K. had been shot. When she screamed “Dad” at Colvin, he ran down the stairs. D.C. testified that she noticed that Colvin’s pocket was heavy, like he was holding a gun in his pocket while running down the stairs. She could see the back of the gun and described it as black. D.C. claimed that Colvin had talked to her about a gun with a laser on it, that he needed a new gun, and that was the kind he wanted. After Colvin ran away, D.C. stayed with A.K. Two of her sisters, Da.C. and S.A., called the police. D.C. heard S.A. tell their younger siblings to go to the basement until “somebody safe” arrived.

{¶ 17} Eighteen-year-old Da.C. also testified. Da.C. explained that she considered Colvin to be her “dad” since he had taken care of her since she was two years old. On the night of the incident, Da.C. went to bed around 9 or 9:30 p.m. Her bedroom was on the same floor as A.K.’s. She was awakened from her sleep when she heard yelling and screaming. She ran down the hallway to A.K.’s bedroom. She could not remember specifics about what she heard but remembered hearing the “b-

word.” When she exited her room, she saw Colvin standing over A.K., talking, yelling, and threatening her. Da.C. testified that A.K. was screaming and telling everyone to get help and to call somebody because she was “bleeding out.” Da.C. could see the blood. She further testified that she and Colvin were staring at one another and she asked him what he was doing. Colvin responded by running down the stairs.

{¶ 18} Cleveland Heights Police Officer Tasoni Collymore testified that she was the first officer at the scene and someone from the family flagged her down to the house. When she got upstairs, she observed Boyfriend applying pressure to A.K.’s wound. Once another officer arrived with gauze, she helped apply pressure to the wound. Boyfriend appeared “a bit scared, confused, shaken up and startled.”

{¶ 19} Boyfriend also testified. He and A.K. dated between January 2024 and May 2025. Prior to May 2025, he had only seen Colvin one time through a window at A.K.’s home. On the day of the incident, he and A.K. had spent time with A.K.’s sister before going to A.K.’s home. A.K. went to answer her bedroom door because she believed one of her children was knocking. When she opened the door, she immediately slammed it closed again and then Colvin burst into the room and said, “You’re going to stop playing with me.” There was a “little struggle” before A.K. was shot. He knew A.K. was shot because he heard the gun “go off.” He also saw the green light, which he believed to be a “beam” coming from a gun. Further, he saw Colvin put his hand in his pocket right before he heard the gunshot. However, Boyfriend did not see the gun. After A.K. fell to the floor, Colvin looked at Boyfriend

and said, “Who the eff are you” and left. Boyfriend further testified that Colvin brought the gun and had it in his possession when it was fired.

{¶ 20} Colvin’s girlfriend (“Girlfriend”) testified subject to a material witness warrant after she failed to appear for trial. At the time of the incident, Colvin lived with her in her home in Mansfield. On the day of the shooting, Colvin was at her home until approximately 6 or 7 p.m. Colvin received a phone call telling him that he was late picking his son up from work. Colvin grabbed a bag, left, and did not return until approximately 1:30 or 1:45 a.m. When he came in, Girlfriend was in the front room of the house, sleeping. He dropped his bag on the floor and went straight to the bathroom. Girlfriend’s daughter got up to use the bathroom, and Colvin allowed her in and then started rushing her to get out of the bathroom. This sparked Girlfriend to go see what was going on. When she walked into the bathroom, she noticed that Colvin was washing his shoes. When she questioned him, she wondered if he stepped in something and Colvin replied that he had. Girlfriend did not believe him and kept questioning him. He became frustrated, banged his hand on the counter, and told her that this was not the right time.

{¶ 21} Girlfriend testified that Colvin then got in the shower, and she believed he took his clothes into the shower with him and washed them. When he came out, he showed her a hole in his jacket and asked whether he would be able to wear it again. She responded by asking what happened to him. Later, Girlfriend turned on her police scanner and heard the police mention her address and describe

Colvin. She then saw police surrounding her house from an upstairs window. At some point, Colvin told her that he shot somebody.

{¶ 22} On cross-examination, Girlfriend denied knowing A.K. and denied owning a gun. She claimed she never saw the Taurus G2C pistol until the night Colvin was arrested. Later, testimony established that the firearm was found in a trash can in Girlfriend's bathroom. She further claimed that when the information came over her police scanner, Colvin melted down and broke into tears.

{¶ 23} Officers from the Mansfield Police Department testified that they arrested Colvin at Girlfriend's home the morning after the shooting. They found clothes that matched the clothing Colvin was seen wearing in a knotted plastic bag in a neighbor's garbage can across the street from Girlfriend's house.

{¶ 24} Trace Evidence Analyst Brooke Lukes from the Cuyahoga County Medical Examiner's Office tested Colvin's shoes and clothing, a gunshot primer residue collection kit, and a wooden brush Colvin allegedly used to clean his shoes. She found a bullet defect and gunshot residue in Colvin's jacket and determined that a firearm was in contact with the jacket when it was fired. Based on her review, it was possible that the firearm was held inside the jacket, inside of its pocket, or on the exterior of the jacket where the jacket was peeled over in front of the muzzle of the gun when it was fired. She also analyzed gunshot residue samples that were taken from Colvin's hands and determined that one of three things happened: Colvin (1) had fired a weapon, (2) was near a weapon being fired, or (3) handled a firearm that was previously fired and contained gunshot primer residue on it. Finally, she

gathered samples and swabs from the clothing, shoes, and brush and sent them to the DNA unit for further analysis.

{¶ 25} Firearm and Tool Mark Analyst Thomas Morgan (“Analyst Morgan”) from the Cuyahoga County Regional Forensic Science Laboratory (the “Forensic Laboratory”) tested and analyzed the Taurus G2C pistol. He test-fired the firearm and determined that it was operable. He acknowledged that he was unable to determine whether the Taurus G2C was used in the shooting because a shell casing was not recovered and the bullet remained lodged inside A.K. Analyst Morgan was also asked to describe the types of “safeties” on the Taurus G2C. He indicated that there were three types on that firearm, a thumb safety, a trigger safety, and a firing pin block. According to Analyst Morgan,

[T]he three safeties themselves, the thumb safety, the firing pin block, and the trigger safety, are all designed to prevent discharge. The thumb safety, when on, it will prevent the slide from moving backwards. When everything is closed and shut properly, it will prevent the trigger from being pulled. And then the trigger safety prevents the trigger from being pulled. And then the firing pin block prevents the firing pin from actually coming through the aperture until the trigger has been moved rearward enough consistent with the pull of the trigger in order to release this here.

{¶ 26} Analyst Morgan explained that these mechanisms are designed to prevent “unintentional discharges from occurring.” On cross-examination, Analyst Morgan explained that the safety features, especially the trigger safety and the firing pin block safety are relatively common on firearms like the Taurus G2C. He also acknowledged that he had no way to confirm that the Taurus G2C was used in the incident at all.

{¶ 27} DNA Analyst Andrew Ziegler (“Analyst Ziegler”) from the Forensic Laboratory compared DNA swabs collected from Colvin and A.K. with samples and evidence collected during the investigation. Relevant to this case, he found Colvin’s DNA on the slide of the Taurus G2C but the sample had lower numbers than typically seen. Analyst Ziegler explained that this could indicate that some of the sample fell below the lab’s detectable threshold. He also observed that there was a mixture of three unknown DNA contributors found on a swab from the gun’s magazine. The test was inconclusive for the presence of Colvin’s DNA, and there was no statistical support for the presence of A.K.’s DNA. Finally, DNA from the grip and trigger came from unknown sources and there was no statistical support for the presence of either Colvin’s or A.K.’s DNA.

{¶ 28} Finally, the State called the lead detective, Cleveland Heights Police Detective Michael Laurello (“Det. Laurello”) to testify. He recovered Colvin’s cell phone, which he dropped at the scene sometime during the incident according to witnesses. He obtained statements from D.C., S.A., and Boyfriend. Further, he testified that he travelled to Mansfield for Colvin’s arrest and learned from Girlfriend where Colvin disposed of his clothing. He also testified that the Taurus G2C was found in Girlfriend’s home in a garbage can in the closet of the downstairs bathroom. On searching the rest of the home, officers found a Smith & Wesson pistol magazine, a Ruger .45 auto pistol case that contained a matching magazine, a semiautomatic 12-gauge shotgun, and a safe containing a Ruger pistol. However, they did not recover a laser attachment. Additionally, officers did not find a shell

casing at the crime scene after searching twice. On cross-examination, Det. Laurello acknowledged that Colvin waived his Miranda rights and gave a statement.

{¶ 29} The State rested, the defense moved to dismiss the case pursuant to Crim.R. 29, and the trial court denied the motion.

{¶ 30} Colvin elected to testify. He explained that he met A.K. when he was in prison around 2008 through mutual friends. When he got out of prison in 2010, they moved in together. They lived together for several years and then she married someone else. Colvin testified that during their relationship, A.K. was volatile when he dated other women. One time, she rammed her car into his, and another time, she kicked his door in when he was living with another woman. He returned to prison in 2022 and got out in 2023.

{¶ 31} During the time of this incident, Colvin testified that A.K. told him she was dating someone but that they broke up. He did not know she had a boyfriend. In contrast to A.K.'s claims, he pointed out that a few months before the shooting, he went to A.K.'s home, knocked on the door, and did not barge in when she told him to leave because she had company.

{¶ 32} The day before the shooting, he went to a cookout A.K. held for his son's birthday. Colvin testified that before he left, he and A.K. arranged to meet the following day. The day of the shooting, he fell asleep and realized that he had forgotten to pick up his son. He noticed that he had missed calls from A.K. After he picked up his son and dropped him off, he drove towards Cleveland. Colvin testified that he and A.K. were supposed to spend the night together in a hotel. When he

arrived at A.K.'s house, he knocked on the front door. S.A. eventually came to the door, asked who it was, and opened the door after Colvin identified himself.

{¶ 33} Colvin then proceeded to go upstairs and knocked on A.K.'s bedroom door. Per Colvin, A.K. called out for the person to wait and, a few minutes later, she opened the door, saw him, and then closed the door. Colvin testified that when she opened the door again, A.K. had a gun in her hand. When he noticed that her finger was not on the trigger, he grabbed the firearm from her, put it in his pocket, and said, "Man, what you got going on in here that you trying to [pull] a gun on me?" He then tried to walk past her. At that point, a shoving match began. He pushed A.K. to try to get her off him and get past her. She was pushing him as well. Colvin testified that his hand was not in his pocket at that time. He said that, next, "a gun went off." He turned on the light, saw Boyfriend and asked, "What are you doing here?" Colvin testified that Boyfriend responded saying he did not know anything about Colvin.

{¶ 34} When he looked down at A.K., Colvin started to panic. He left, placed the gun on "the tote thing that had clothes in it," and walked out. As he was leaving, he heard D.C. say, "Oh my God, Oh my God." He continued downstairs and returned home. When he was asked why he left the mother of his children, whom he had known for 17 years, after the shooting and whether he had ever been involved in anything like that, he testified he was 51 years old and had never been involved in a shooting or domestic violence. Rather, his past criminal history was for selling drugs and he denied involvement in anything violent.

{¶ 35} Colvin explained that he panicked after he returned to Mansfield. He jumped in the shower and even tried to call A.K. Colvin denied washing his clothes in the shower, he just showered and changed his clothes. Finally, he denied intentionally shooting A.K., stating that he did not shoot anyone and did not intend to shoot anyone.

{¶ 36} On cross-examination, Colvin denied being abusive towards A.K. Further, he claimed that Girlfriend lied during her testimony. Next, the State confronted him with the text messages he acknowledged sending to A.K. Colvin admitted that he did not say anything about seeing A.K. later that night or any plans they had together in the text messages. He also testified that he did not normally go upstairs to A.K.'s room late at night.

{¶ 37} When asked whether any of the weapons in his house were involved in the incident, Colvin testified that he did not bring a firearm with him that day. Colvin claimed that several witnesses were lying on the stand and their testimony was different from statements they made to police. Colvin acknowledged that he did not tell the police that the firearm accidentally went off. Rather, he told them that A.K. shot herself and he did not shoot anyone.

{¶ 38} The defense rested and renewed its Crim.R. 29 motion. The trial court denied the motion as to Counts 1 through 5 and granted it with respect to the three endangering children charges in Counts 6, 7, and 8. At that time, the parties agreed that if the jury found Colvin guilty, he would forfeit the gun.

{¶ 39} The trial court read the charge to the jury. Relevant to this case, the trial court gave the following instructions:

Since the defendant has entered a plea of not guilty, he is presumed innocent until there is proof of guilt beyond a reasonable doubt. The presumption of innocence, therefore, is only overcome when you, as a jury, find that the proof is such as to exclude every reasonable doubt of the guilt of the defendant on any particular count.

The presumption of innocence is not a mere formality. Every juror is bound to entertain it sincerely, conscientiously, and ungrudgingly and to give the defendant the full benefit of it.

...

And serious physical harm includes any physical harm which carries a substantial risk of death; any physical harm which involves some permanent incapacity, whether partial or total, or which involves some temporary, substantial incapacity; or any physical harm which involves some permanent disfigurement, or which involves some temporary serious disfigurement; and it also includes any physical harm which involves acute pain of such duration as to result in substantial suffering; or which involves any degree of prolonged or intractable pain.

...

And then the same specs are on this count, the first spec having a firearm; the second spec having and using a firearm. Specs, as a reminder, also have to be proved beyond a reasonable doubt.

...

And a family or household member would include any of the following: First of all, any of the following who is residing or has resided with the defendant; a spouse, a person living as a spouse, or a former spouse of the defendant.

{¶ 40} The jury returned a verdict finding Colvin guilty on both felonious assault counts, domestic violence, and having weapons while under disability, and the one- and three-year firearm specifications attached to the felonious assault

charges. The jury was unable to reach a unanimous verdict on Count 1, attempted murder. The trial court declared a mistrial regarding that count, and the State later dismissed Count 1 prior to sentencing.

{¶ 41} At the sentencing hearing, the parties agreed that Counts 2, 3, and 5, both felonious assault counts and the domestic violence count, merge as allied offenses of similar import. The State elected to proceed on Count 2, felonious assault causing serious physical harm. The trial court imposed a sentence of seven years on Count 2 and 18 months on Count 4 to run concurrently with one another. The trial court imposed a term of three years each on the firearm specifications associated with Counts 2 and 3 and ran them consecutively. The aggregate prison term was 13 years to 16 1/2 years.

II. Law and Analysis

A. Manifest Weight of the Evidence

{¶ 42} In the first assignment of error, Colvin argues that his convictions are not supported by the manifest weight of the evidence. Colvin claims the shooting was accidental. He argues that (1) the witness testimony supports a finding that A.K.'s shooting was accidental; (2) the DNA evidence established multiple people handled the firearm and that Colvin's DNA was not found on the trigger; and (3) the jury clearly lost its way where the evidence supported a finding that the shooting was accidental and not deliberate. Colvin's arguments are not well taken.

{¶ 43} A “weight of the evidence [challenge] involves the inclination of the greater amount of credible evidence.” *State v. Harris*, 2021-Ohio-856, ¶ 32 (8th

Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). It addresses “the evidence’s effect of inducing belief.” *Id.*, quoting *State v. Wilson*, 2007-Ohio-2202, ¶ 25, citing *Thompkins* at 386-387. The jury may notice inconsistencies in testimony, resolve them, and choose to believe all, part, or none of a witness’s testimony. *State v. Hunter*, 2024-Ohio-5782, ¶ 36 (10th Dist.), citing *State v. Henderson*, 2011-Ohio-4761, ¶ 22 (10th Dist.). The reviewing court must consider all the evidence in the record, the reasonable inferences to make from it, and the credibility of the witnesses to determine ““whether in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.”” *Harris* at ¶ 32, quoting *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983). “Such a determination is rare, arising only in exceptional cases in which the evidence presented at trial weighs heavily against the jury’s verdict.” *State v. McCollum*, 2026-Ohio-393, ¶ 14 (12th Dist.).

{¶ 44} Although a challenge to the manifest weight of the evidence requires an appellate court to consider the credibility of the witnesses, we are mindful that “[t]he 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.’” *State v. McCall*, 2017-Ohio-296, ¶ 14 (8th Dist.), quoting *Wilson*, at ¶ 24. Moreover, the Ohio Supreme Court noted that

[a]n appellate court sits as the thirteenth juror only when evidence contradicts a fact-finder’s findings, *see State v. Martin*, 2022-Ohio-4175, ¶ 26, or when a witness’s testimony is so inconsistent as to

material facts, so impeached, or so fantastical as to make it patently unbelievable.

State v. Reillo, 2026-Ohio-2701, ¶ 3.

{¶ 45} Colvin focuses on the requirement that the State had to prove that he acted knowingly under the felonious assault statute, i.e., that he knowingly caused serious physical harm to another.

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).

{¶ 46} In contrast, “the defense of accident is not an excuse or justification for the admitted act; it is a complete denial that an unlawful act was committed because the defendant did not have the requisite mens rea.” *State v. Crawford*, 2016-Ohio-7779, ¶ 17 (8th Dist.), citing *State v. Poole*, 33 Ohio St.2d 18, 19 (1973).

{¶ 47} Colvin claims the testimony established that there was a struggle and that the Taurus G2C fired accidentally. In support of that argument, he points to Boyfriend's, A.K.'s, and his own testimony that described a physical altercation or tussle between A.K. and Colvin at the time she was shot. Further, he points to a statement that Det. Laurello took from D.C. noting she observed Colvin and A.K. wrestling on the floor and saw Colvin standing over A.K. after she had been shot. Notably, D.C. testified that she heard a lot of wrestling and arguing while in her

bedroom. She also testified that she heard the gunshot from her bedroom, went downstairs, and saw A.K. lying on the floor with Colvin standing over her.

{¶ 48} However, A.K. testified that prior to being shot, she saw a beam of light at the top of her chest and was shot after she pushed Colvin away. Similarly, Boyfriend also saw the beam during the shooting. Additionally, D.C. testified that Colvin talked about purchasing a gun with a laser sight. Both A.K. and D.C. testified that they saw the back of the gun in Colvin's pocket as he ran away.

{¶ 49} Furthermore, the jury could infer from the testimony that Colvin went to A.K.'s home that night in anger to confront her about his dissatisfaction with their relationship. Colvin called A.K. multiple times within a relatively short period of time, and A.K. did not answer any of his calls. He then texted her messages that expressed anger and dissatisfaction about how he perceived A.K. was treating him. Colvin's testimony that he and A.K. arranged to meet that night was belied by his own actions. Similarly, A.K.'s testimony that she arranged a date with Boyfriend contradicted Colvin's testimony that they planned a tryst that night. From this testimony, regardless of whether the jury believed Colvin or A.K. about why he was there that night, the jury could infer that Colvin caught A.K. in her bedroom with another man and was in possession of the weapon when A.K. was shot.

{¶ 50} Next, Colvin argues that the absence of his DNA on the trigger but the presence of two unknown DNA samples supports his accident theory. However, we find that the DNA evidence was largely irrelevant in this case. Even if we assume for the sake of argument that the gun belonged to A.K., Colvin testified that he disarmed

her and the gun was in his pocket. Analyst Ziegler established that there was a DNA profile lifted from the grip and trigger of the firearm. The sample was a mixture containing DNA from two unknown contributors, and there was no statistical match for the DNA to either Colvin or A.K. However, there was a DNA match with Colvin for DNA found on the slide of the firearm but no corresponding match with A.K. Thus, the DNA evidence does not conclusively establish who pulled the trigger nor does it exclude anyone as the shooter.

{¶ 51} Finally, Analyst Morgan testified about the safety features of the Taurus G2C and other similar firearms. For the Taurus G2C specifically, he testified that there were safety features that precluded the possibility of an accidental discharge of the weapon. The thumb safety was distinctive to the Taurus G2C. Analyst Morgan testified that if the thumb safety was off, a person could only override the other two safeguards by putting their finger on the trigger and pulling it. Those trigger safeguards were also present on most similar firearms according to Analyst Morgan, such that they could only be overridden when someone pulled the trigger. From this, the jury could have concluded that Colvin had his finger on the trigger and pulled it in order to cause the gun to fire.

{¶ 52} Based on the foregoing, the jury could have rejected the accident theory and determined that Colvin knowingly shot A.K. The jury chose to believe all, part, or none of a witness's testimony. *Hunter*, 2024-Ohio-5782, at ¶ 36 (10th Dist.), citing *Henderson*, 2011-Ohio-4761, at ¶ 22 (10th Dist.). Accordingly, the first assignment of error is overruled.

B. Jury Instructions

{¶ 53} In the second assignment of error, Colvin argues that the trial court committed structural error because jury instructions were omitted or incomplete.

{¶ 54} A party is required to raise any objections to the jury instructions “before the jury retires to consider its verdict.” Crim.R. 30(A); *State v. Ruediger*, 2024-Ohio-1975, ¶ 91 (8th Dist.). Absent a timely objection, the party “waives all but plain error.” *Id.*, quoting *State v. Owens*, 2020-Ohio-4616, ¶ 7. Additionally, the mere failure of a court to “separately and specifically instruct the jury on every essential element of each crime with which an accused is charged does not *per se* constitute plain error under Crim.R. 52(B).” (Emphasis in original.) *State v. Blackburn*, 2003-Ohio-605, ¶ 14 (11th Dist.), quoting *State v. Adams*, 62 Ohio St.2d 151 (1980), paragraph two of the syllabus. An appellant establishes that they were prejudiced by a trial court’s plain error by demonstrating that but for the trial court’s error, the outcome of the trial would have been different. *Id.* at ¶ 13, citing *State v. Underwood*, 3 Ohio St.3d 12 (1983), syllabus.

{¶ 55} However, Colvin argues that the error was structural rather than plain. Structural error occurs when there

is a defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. Structural errors permeate [t]he entire conduct of the trial from beginning to end so that the trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. We have recognized that structural error can be found only in a very limited class of cases.

(Cleaned up.) *State v. Monford*, 2011-Ohio-6398, ¶ 7.

{¶ 56} Colvin raises the following four challenges to the jury instructions: he argues the trial court failed to (1) adequately instruct the jury on presumption of innocence; (2) orally instruct the jury on terms that appear in the written jury instructions; (3) instruct the jury that the firearm specifications must be proven beyond a reasonable doubt; and (4) instruct the jury on the having weapons while under disability charge at all.

1. Presumption of Innocence

{¶ 57} The trial court's oral instruction to the jury was as follows:

Since the defendant has entered a plea of not guilty, he is presumed innocent until there is proof of guilt beyond a reasonable doubt. The presumption of innocence, therefore, is only overcome when you, as a jury, find that the proof is such as to exclude every reasonable doubt of the guilt of the defendant on any particular count.

The presumption of innocence is not a mere formality. Every juror is bound to entertain it sincerely, conscientiously, and ungrudgingly and to give the defendant the full benefit of it.

{¶ 58} Colvin argues that the trial court was required to instruct the jury that they were bound to the presumption of innocence "without any mental reservation whatsoever," and that the words, "sincerely, conscientiously, and ungrudgingly" conveys different requirements for the jury. The inclusion of the latter words without the former phrase, Colvin argues, "dilutes the presumption of innocence and minimizes the state's burden of proof as beyond a reasonable doubt."

{¶ 59} Colvin does not cite any case law or statutory authority for the inclusion of the phrase "without mental reservation." An appellate court may disregard any assignment of error where the party raising it "fails to argue the

assignment separately in their brief.” *Doe v. Cuyahoga Cty. Community College*, 2022-Ohio-527, ¶ 25 (8th Dist.), quoting App.R. 12(A)(2).

{¶ 60} Nevertheless, we continue our review and note that the Ohio Revised Code provides some guidance in R.C. 2938.08, noting that

[a] defendant in a criminal action is presumed to be innocent until he is proved guilty of the offense charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he shall be acquitted. The presumption of innocence places upon the state (or the municipality) the burden of proving him guilty beyond a reasonable doubt.

{¶ 61} Furthermore, “[e]very person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution.” R.C. 2901.05(A). The trial court instructed the jury that Colvin was presumed innocent and the presumption is only overcome when the jury determines that the proof excludes all reasonable doubt of his guilt on any particular account. Based on the foregoing, we find that the trial court’s presumption-of-innocence instruction was proper. Therefore, there was no error, let alone a plain or structural one.

2. Omitted Instructions

{¶ 62} Colvin gives a laundry list of omitted instructions without any argument or analysis to establish that their mere omission was sufficient to establish error. Additionally, the trial court did provide some instruction on terms Colvin claims were omitted, e.g., “serious physical harm” and “family or household member.”

{¶ 63} Colvin bears the burden of establishing plain error. Once identified, structural error requires an automatic reversal. *State v. Bond*, 2022-Ohio-4150, ¶ 7. Colvin did not support this portion of his brief with an analysis of the missing instructions and how they impacted his conviction, the existence of plain error, or the existence of structural error; therefore, we decline to address it. *Doe*, 2022-Ohio-527, at ¶ 25 (8th Dist.).

3. Having Weapons While Under Disability and the Firearm Specifications

{¶ 64} Finally, Colvin argues that the trial court did not instruct the jury on the crime of having weapons while under disability or that they must find him guilty of the firearm specifications by proof beyond a reasonable doubt. He is mistaken.

{¶ 65} Our review of the record reveals that the trial court orally instructed the jury on the firearms specification associated with Count 2 and did not indicate explicitly that they needed to be proven beyond a reasonable doubt. However, after instructing the jury on Count 3, the trial court noted, “[T]hen the same specs are on this count, the first spec having a firearm; the second spec having and using a firearm. Specs, as a reminder, also have to be proved beyond a reasonable doubt.”

{¶ 66} Furthermore, the trial court fully reviewed the elements of the having-weapons-while-under-disability instruction in its charge to the jury.

So, before you can find [Colvin] guilty of this count, you must find beyond a reasonable doubt that on or around May 25, in this county that he did knowingly acquire, have, carry, or use a firearm when he was under — well, actually, when he had been convicted of a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, namely, on August 31, 2022, conviction in Richland County, case number ending in 050, for

trafficking in cocaine, so as with any other count, if every element is proved, you must find guilty. If, however, anything less than every element is proved, you must find not guilty.

{¶ 67} The trial court defined “knowingly” and “firearm” earlier in the instructions, and the remaining terms “acquire, have, carry, or use” are readily understandable. Here, the trial court gave the required instructions, though the court did not repeat the definitions later in the instructions. The fact they were not grouped together does not, per se, establish plain error. *See Blackburn*, 2003-Ohio-605, at ¶ 14 (11th Dist.).

{¶ 68} Based on the foregoing, we overrule the second assignment of error.

C. Ineffective Assistance of Counsel

{¶ 69} Finally, in his third assignment of error, Colvin argues that he received ineffective assistance of counsel because his lawyer did not request “an instruction,” on the defense of accident. This argument is not well taken.

{¶ 70} When reviewing a claim of ineffective assistance of counsel, this court must determine whether counsel’s performance has ““fallen below an objective standard of reasonable representation and [that] prejudice arises from counsel’s performance.”” *State v. Gilmer*, 2022-Ohio-821, ¶ 11 (8th Dist.), quoting *State v. Sims*, 2021-Ohio-4009, ¶ 21 (8th Dist.), quoting *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. Both elements must be proven to prevail on a claim of ineffective assistance of counsel. *State v. Harris*, 2022-Ohio-4630, ¶ 48 (8th Dist.).

{¶ 71} “Licensed attorneys enjoy a strong presumption that they are competent.” *Harris* at ¶ 49, citing *State v. Scarton*, 2020-Ohio-2952, ¶ 89 (8th Dist.). Accordingly, an appellate court gives “great deference to counsel’s performance and “[indulges] a strong presumption” that counsel’s performance “falls within the wide range of reasonable professional assistance.”” *Id.*, quoting *Scarton*, quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

{¶ 72} Generally, error occurs when a trial court fails to provide an accident jury instruction where the facts of the case warrant that instruction and the defendant’s lawyer fails to request the instruction. *State v. Smiley*, 2010-Ohio-4349, ¶ 16 (8th Dist.). However, “if the trial court’s general charge was otherwise correct, it is doubtful that this error or omission would ever satisfy the test for plain error or ineffective assistance of counsel.” *Id.*, quoting *State v. Stubblefield*, 1991 Ohio App. LEXIS 610 (1st Dist. Feb. 13, 1991), citing *State v. Sims*, 3 Ohio App.3d 331, 335 (8th Dist. 1982). The reasoning for this is that “the defense of accident is not an excuse or justification for the admitted act; it is a complete denial that an unlawful act was committed because the defendant did not have the requisite mens rea.” *Crawford*, 2016-Ohio-7779, at ¶ 17 (8th Dist.), citing *Poole*, 33 Ohio St.2d, at 19. The instruction serves to remind the jury that the defendant presented evidence of accident that negates the defendant’s criminal intent. *Id.*, citing *State v. Sunderman*, 2008-Ohio-3465, ¶ 27 (5th Dist.). If the jury is convinced by the defendant’s accident defense, they must find the defendant not guilty based on the trial court’s general instruction. *Id.*, citing *id.*

{¶ 73} Here, the trial court properly instructed the jury on the elements of felonious assault causing serious physical harm, felonious assault with a deadly weapon or dangerous ordnance, and domestic violence. Therefore, even if it was error for the trial court to omit an accident instruction or for counsel not to request it, Colvin cannot establish that he was prejudiced by the error. Accordingly, we decline to find plain error, and the third assignment of error is overruled.

{¶ 74} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated.

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

EMANUELLA D. GROVES, JUDGE

MICHELLE J. SHEEHAN, A.J., and
MICHAEL JOHN RYAN, J., CONCUR