

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 116035
 v. :
 :
 ERIC ALGEE, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 22, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-700703-A

Appearances:

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

Kimberly Kendall Corral, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Eric Algee appeals from his convictions, entered after a jury trial, for attempted murder and other related offenses arising from his shooting the victim as she was leaving a friend's house. For the following reasons, we affirm.

A. Facts and Procedural History

{¶ 2} Algee stalked and ambushed the victim as she was backing a borrowed car from the driveway of her friend's house. Algee fired numerous rounds, seven of which hit the victim as she sat helpless in the driver's seat. The entire shooting was recorded on a common doorbell camera. Algee fled the scene on foot. The victim managed to drive to the nearby Garfield Heights, Ohio, police station. As officers rendered lifesaving aid awaiting the emergency medical response, they questioned the victim about the shooting. The victim, visibly suffering from the numerous wounds, originally identified the shooter as the father of her child but then provided Algee's name and description. The victim and Algee had a tumultuous relationship that previously ended with the victim obtaining an order of protection against Algee, before the relationship was briefly rekindled.

{¶ 3} The victim's friend witnessed the shooting and also identified Algee in the written statement she provided to the investigators. Her 911 call did not identify Algee by name, and in her written statement, she identified Algee as the shooter and indicated that she would be able to identify him "if I see him again." Algee latches on to that statement claiming the friend did not know it was Algee until after the fact and thus would be unable to identify him as the shooter. The friend identified Algee from a six-person photographic array.

{¶ 4} As the investigation unfolded, officers discovered a global-positioning-system ("GPS") tracker on the victim's car. She borrowed that car from her then boyfriend because, according to the victim, her car was inoperable because

of severed brake lines. Algee had been informed of the seriousness of the victim's newer relationship in the days preceding the shooting.

{¶ 5} Investigators discovered evidence that Algee purchased that GPS tracker and monitored the delivery progress as the order was fulfilled. Algee purchased the device using the alias "Jhon Algee," but he also used the email address ericalgeesr@icloud.com to complete the order. The device was then shipped to a "Jhon Snow," at an address adjacent to Algee's last known address. It is unknown when the tracker was placed on the victim's borrowed car, but evidence presented at trial demonstrated that Algee had been logging into the GPS tracking software to monitor its location around the time of the shooting, which also aligned with Algee's smartphone location during that time as demonstrated through cell tower tracking data. Testimony established that Algee's smartphone location was consistent with a pattern of his following the victim leading up to and at the time of the shooting.

{¶ 6} Various home-surveillance cameras caught Algee's flight from the scene, although his face was not visible in the camera footage. At trial, Algee focused on the pants depicted in one of the videos because they appeared to be form-fitting pants described as "skinny jeans," whereas Algee was arrested an hour after the shooting wearing baggier fitting ones. Also at the time of his arrest, Algee tested positive for gunshot residue.

{¶ 7} The jury found Algee guilty of attempted murder, discharge of a firearm on or near prohibited premises, two counts of felonious assault, and attendant firearm specifications. The trial court found him guilty of two counts of

having weapons while under a disability and domestic violence based on the waiver of the jury trial over those offenses. After merging several of the allied offenses and imposition of consecutive sentences, Algee was sentenced to an aggregate, indefinite term of 25 to 30.5 years in prison.

{¶ 8} In this appeal, Algee advances six assignments of error that will be addressed as presented but consolidated where appropriate.

B. Sufficiency and Manifest Weight of the Evidence

{¶ 9} In the first two assignments of error, Algee claims his convictions are not based on sufficient evidence, or in the alternative, that the jury lost its way in convicting him of attempted murder and the related crimes because the State failed to present direct evidence that he was the shooter.

{¶ 10} At the onset, it must be acknowledged that Algee's sufficiency argument is based on the credibility of the victim's and her friend's identification of Algee as the shooter. They both identified Algee as the person who fired the weapon. "Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Dent*, 2020-Ohio-6670, ¶ 15, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). "When reviewing the sufficiency of the evidence, 'the question is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.'" *State v. Balmert*, 2025-Ohio-5588, ¶ 10, quoting *State v. Groce*, 2020-Ohio-6671, ¶ 7, and *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. The weight to be given the evidence and the

credibility of the witnesses are primarily for the trier of the facts. *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967). Thus, credibility of the witnesses is not considered under sufficiency review based on the deference to the trier of fact, contrary to Algee’s argument otherwise.

{¶ 11} Algee’s arguments are arguably more relevant to the manifest-weight standard. “[U]nder a manifest-weight review, a court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (Cleaned up.) *State v. Reillo*, 2026-Ohio-2701, ¶ 26.

{¶ 12} Credibility of the State’s witnesses, however, is also not considered under the manifest-weight review when there is no conflicting evidence presented, such as in this case in which Algee did not present witnesses or evidence in his defense. *See Reillo* at ¶ 30. As the Ohio Supreme Court recently held, when a defendant does not present evidence, there is no conflicting evidence to weigh and “courts must have conflicting evidence to conduct a manifest-weight review.” *Id.* at ¶ 30. In the absence of conflicting evidence, manifest-weight review is limited to determining whether there is “internally contradictory testimony as to material facts, direct impeachment, or fantastical testimony clearly undermin[ing] a witness’s credibility on a cold record.” *Id.* at ¶ 31. Notwithstanding that limited review, appellate courts must defer to the trier of fact’s conclusions because the

trier of fact “is in the best position to determine the weight and credibility of the evidence, including inconsistencies, along with witness manner and demeanor, and is in the sole position to believe or disbelieve all or any of the testimony presented at trial.” *Id.* at ¶ 32, quoting *State v. Johnson*, 2023-Ohio-2424, ¶ 23 (6th Dist.).

{¶ 13} In this case, Algee’s argument that the victim’s and the friend’s identification of him as the shooter was not credible is overruled, irrespective of the circumstantial evidence corroborating the witnesses’ identification of Algee — the gunshot residue, the evidence surrounding the purchase and use of the GPS tracker, and his cell tower tracking data. *See State v. Shabazz*, 2016-Ohio-1055, ¶ 18 (“Circumstantial evidence and direct evidence inherently possess the same probative value, and it is within the province of the factfinder to draw reasonable inferences from the evidence presented.”). Their testimony identifying him as the shooter was not fantastical, internally inconsistent as to a material fact, or patently incredible. *See Reillo* at ¶ 3. More important, we must defer to the trier of fact’s credibility determinations, and as a result, the minor inconsistencies in the identification of Algee by the two women are not sufficient to overturn the jury’s conclusion that Algee was the perpetrator, which standing alone demonstrates all elements of the offenses as charged. *See id.* The first two assignments of error are overruled.

C. Ineffective Assistance of Counsel

{¶ 14} In the third assignment of error, Algee claims his trial counsel rendered ineffective assistance.

{¶ 15} “A reviewing court will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *State v. Powell*, 2019-Ohio-4345, ¶ 69 (8th Dist.), quoting *State v. Pawlak*, 2014-Ohio-2175, ¶ 69 (8th Dist.). Ordinarily, to establish an ineffective-assistance-of-counsel claim, a defendant must demonstrate that (1) his or her “counsel’s performance was deficient,” and (2) “the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish prejudice, Algee must show there is a reasonable probability that, but for counsel’s deficient performance, the outcome would have been different. *State v. Drain*, 2022-Ohio-3697, ¶ 36, citing *Strickland*, at 687-688. A “reasonable probability” is a probability of a different result sufficient enough to undermine confidence in the outcome. *Drain* at ¶ 52, quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004), and *Strickland* at 694.

{¶ 16} Algee presents five independent claims under this assignment of error, claiming his trial counsel rendered ineffective assistance for (1) failing to call a witness who purportedly saw Algee walking away from the shooting; (2) allowing the State to play the video of the shooting during its opening argument; (3) failing to object to the lack of authentication of two videos admitted into evidence; (4) failing to “routinely” object throughout trial; and (5) failing to request a curative

instruction after the trial court sustained an objection to the victim testifying for the reason she sought a protective order against Algee. Each will be addressed in summary fashion in light of the arguments presented.

{¶ 17} Algee’s first claim, regarding the failure to call a witness, is based on speculation. Algee claims that a witness who was interviewed by police officers could have testified that the person he saw ostensibly fleeing the shooting wore different clothes than Algee was wearing during his arrest an hour after the shooting. The clothing issue — skinny jeans versus baggy pants — was addressed at trial by other means with Algee basing his defense on the argument that the shooter had different pants than Algee was wearing at the time of his arrest. The jury rejected that argument based on its review of the photographs, videos, and corroborating circumstantial evidence.

{¶ 18} But more important, nothing in this record establishes the content of that witness’s predicted testimony for the purpose of considering the prejudice prong of the ineffective-assistance analysis other than a single question from defense counsel in cross-examination of one of the detectives, describing a body-camera video (not played for the jury) in which the eyewitness described a six-foot-tall person wearing “skinny black jeans” as the person seen cutting through his yard.¹ Tr. 542:5-8. In general, as the State points out, failure to call a witness to testify concerns trial strategy, which “will not be second-guessed by a reviewing court.”

¹ According to the record in this case, Algee is listed as 5'11" tall.

State v. Deal, 2010-Ohio-153. “A party seeking to establish ineffective assistance of counsel based on failure to call a witness must establish that the witness’s testimony ‘would have significantly assisted the defense and affected the outcome of the case.’” *State v. Griffith*, 2012-Ohio-2628, ¶ 29. For all we know, that witness may well have been able to identify Algee, just as much as he might have identified another suspect. Either way, because the content of the witness’s testimony is not part of this record and that which is apparent from the record only addresses an issue Algee attempted to prove through different evidence, it cannot be concluded that Algee was prejudiced by the failure to have the eyewitness testify at trial. The jury heard that a potential witness would also testify that the pants being worn by the fleeing shooter differed from those Algee wore when arrested an hour later. There is no demonstrable prejudice.

{¶ 19} Algee’s second claim, regarding the State’s use of the video of the shooting during the opening statement, is without merit. Algee has presented no authority supporting the proposition that a party is precluded from using demonstrative aids during the opening statement, especially those later admitted into evidence. *See* App.R. 16(A)(7). In general, “a trial court has broad discretion to control its proceedings, including opening and closing statements.” *Hadjuk v. Rusnak*, 2024-Ohio-339, ¶ 47 (8th Dist.), citing *United v. J. J. Detweiler Ents.*, 2008-Ohio-838 (5th Dist.). Algee does not address that standard. Instead, the single citation and argument presented for our review is limited to the proposition that “[o]pening statements are an outline of the case to be presented and are

intended to give the jury a general idea of what each side expects the evidence to show.” *Telecom Acquisition Corp. I v. Lucic Ents.*, 2016-Ohio-1466, ¶ 32 (8th Dist.). That citation does not establish the proposition of law Algee would have this panel create, that parties are per se precluded from using demonstrative aids during opening statements.

{¶ 20} While we find no error in the State’s use of the camera footage in the opening statement based on the limitations with the argument presented, this practice, when it involves the use of substantive evidence in the opening statement, can prove problematic. If the evidence is later successfully challenged, an obvious problem occurs. That concern is not present because, as will be discussed below, Algee agreed that the video footage in question was admissible.

{¶ 21} This conclusion further resolves the fifth assignment of error, in which Algee claims the prosecutor engaged in misconduct by using the video recording during the opening statement. In light of the failure to demonstrate that use of the video violated some rule or principle of law, it cannot be said that the prosecutor engaged in misconduct by presenting the video during the opening statement, especially at the tacit permission of the trial court that permitted the opening to proceed in that manner.

{¶ 22} Algee’s next ineffective-assistance argument focuses on his argument that his trial counsel failed to object to lack of foundation for two surveillance camera video recordings presented at trial introduced under the silent-witness theory. *See State v. Ladson*, 2022-Ohio-3670, ¶ 21 (8th Dist.) (silent witness

evidence “speaks for itself, and is substantive evidence of what it portrays independent of a sponsoring witness,’ and the evidence may be admitted ‘upon a sufficient showing of the reliability of the process or system that produced the evidence”). According to Algee, because the videos were not authenticated before being shown to the jury, the videos were per se inadmissible and his trial counsel should have objected. Importantly, Algee is not claiming that the videos in question are not authentic under Evid.R. 901(A), only that the State failed to lay a foundation before publishing to the jury and his trial counsel failed to capitalize on the lack of the foundation.

{¶ 23} Algee is overlooking the fact that there was no foundation before introducing the videos at trial because he failed to object, obviating the need to lay the foundation. The failure to object to the video recordings waives all but plain error. *State v. Davis*, 2008-Ohio-2, ¶ 86, citing *State v. Drummond*, 2006-Ohio-5084, ¶ 187. But beyond that waiver, Algee also agreed to admit the video recordings near the close of trial when the evidence was moved into the record. *See id.* As a result, Algee affirmatively permitted the State to introduce the videos without requiring foundational testimony. He thus “invited any error and may not ‘take advantage of an error which he himself invited or induced.’” *Id.*, quoting *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.*, 28 Ohio St.3d 20 (1986), paragraph one of the syllabus. Because the parties agreed to the admission of the video recordings into evidence, the State was relieved of any burden to lay a foundation before

publishing the videos at trial. *Id.* at ¶ 87. The lack of a foundation for the videos alone is not a reason to demonstrate a deficient performance by trial counsel.

{¶ 24} Algee’s penultimate ineffective-assistance claim is based on the number of objections raised at trial, which according to him were too few given the length of trial. Algee has presented no authority establishing a minimum number of objections needed to satisfy constitutional concerns. *See* App.R. 16(A)(7). To the contrary, it has been held that “failure to make objections is not alone enough to sustain a claim of ineffective assistance of counsel.” *State v. Platt*, 2024-Ohio-1330, ¶ 94 (4th Dist.), quoting *State v. Conway*, 2006-Ohio-2815 ¶ 103. This is because “the decision of trial counsel not to pursue every possible trial tactic for reasons of strategy does not result in ineffective assistance of counsel.” *State v. Ellison*, 2003-Ohio-6748, ¶ 32 (6th Dist.), citing *State v. Brown*, 38 Ohio St.3d 305, 319 (1988). In other words, even if some testimony arguably violates an evidentiary foundation, an objection is not per se required based on trial strategy concerns. Further, and more important, Algee has not identified specific testimony that warranted an objection, the basis of that objection, or the requisite prejudice. *See id.*; App.R. 16(A)(7).

{¶ 25} And Algee’s final argument with respect to the ineffective-assistance assignment of error is based on the lack of a curative instruction after the State elicited testimony regarding the victim’s reason for seeking a prior protective order against Algee — the victim testified that she sought the order because Algee “struck me in the head.” The trial court sustained Algee’s objection to that answer. Tr. 187.

{¶ 26} A curative instruction is a “means of remedying errors or irregularities that occur during trial.” *State v. Fields*, 2008-Ohio-5867, ¶ 42 (8th Dist.), citing *State v. Zuern*, 32 Ohio St.3d 56, 61 (1987). Although no specific curative instruction was provided after the victim’s statement, the trial court instructed the jury at the beginning of trial that “[i]f an answer is given to the question before a ruling on the objection is made, or if the Court grants a motion to strike out the answer, you are to completely disregard any such question and answer and not consider either for any purpose.” Tr. 167. Algee has not addressed the impact that instruction has on his appellate argument or otherwise claimed that the jury disregarded the unambiguous instruction. App.R. 16(A)(7).

{¶ 27} Having found no merit to any of the arguments under the third and fifth assignments of error, they are overruled.

D. Second Amendment of the Constitution

{¶ 28} In the fourth assignment of error, Algee claims his weapons-under-disability conviction is facially unconstitutional under *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1, 24 (2022). Algee is raising this argument for the first time on appeal and limits his argument to three short paragraphs reciting *Bruen* and a memorandum in support of jurisdiction filed by the State in *State v. Striblin*, Ohio Supreme Court No. 2024-1050, as authority for our consideration. Essentially, Algee is asking for this panel to declare the weapons-under-disability statute facially unconstitutional in a cursory argument presented for the first time in an appeal.

{¶ 29} “Generally, the question of a statute’s constitutionality must be raised at the first opportunity.” *Ohio Mfrs.’ Assn. v. Ohioans for Drug Price Relief Act*, 2016-Ohio-5377, ¶ 38, fn. 2, citing *State v. Quarterman*, 2014-Ohio-4034, ¶ 15. “When a party fails to object to an error at the trial-court level, they are limited to arguing plain error on appeal.” *State v. Stafford*, 2026-Ohio-1378, ¶ 11 (8th Dist.), citing *State v. Bouyer*, 2023-Ohio-4793, ¶ 62 (8th Dist.). Because Algee has not addressed this limitation, we will not consider his broadly stated constitutional argument. *State v. Rogers*, 2015-Ohio-2459, ¶ 23 (“But even if an accused shows that the trial court committed plain error affecting the outcome of the proceeding, an appellate court is not required to correct it.”); *see also State ex rel. Ware v. Giavasis*, 2020-Ohio-3700, ¶ 8 (appellant waived the argument that R.C. 149.43(B)(8) is unconstitutional by failing to raise the issue in the lower court). Plain error need not be recognized, and in this case given the lack of developed arguments, we decline to address the constitutional question for the first time in the appeal.

E. Cumulative Error

{¶ 30} In the sixth, and final, assignment of error, Algee claims the cumulative effect of multiple errors violated his constitutional rights. “Under the cumulative error doctrine, a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial court error does not individually constitute cause for reversal.” *State v. Castellon*, 2019-Ohio-628, ¶ 44 (8th Dist.), citing *State v.*

DeMarco, 31 Ohio St.3d 191, 196-197 (1987). Because none of the assignments of error demonstrated the existence of an error not resulting in reversal, the final assignment of error is overruled.

F. Conclusion

{¶ 31} After consideration of all arguments presented, it cannot be concluded that any reversible error occurred. The convictions are 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 conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
EILEEN A. GALLAGHER, J., CONCUR