[Cite as *In re A.T.*, 2021-Ohio-2934.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE A.T.	:	
	:	No. 110123
A Minor Child	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 26, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL-20-105258

Appearances:

John H. Lawson, *for appellant*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jamielle M. Lamson-Buscho, Assistant Prosecuting Attorney, *for appellee*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant A.T. brings this appeal challenging the juvenile court's adjudications of delinquency for aggravated burglary, assault, and criminal damaging. Appellant argues that the juvenile court's adjudications of delinquency were not supported by sufficient evidence and are against the manifest weight of the evidence, and that the juvenile court erred in admitting three photographs of the

victim into evidence at trial. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} The instant matter involves an incident that occurred on June 10, 2020, involving appellant and the victim in this case, C.C. Appellant and the victim were in an on-again, off-again relationship that began around May 2019. (Tr. 34.) The incident occurred at the victim's house in Euclid, Ohio.

{¶ 3} The victim and appellant provided conflicting accounts of what transpired on the day in question. According to the victim, appellant advised her on June 9, 2020, that he was coming to her house the following day to pick up his welding equipment that he left there on a prior occasion. She told appellant that he was not allowed to come to her house because they were not on speaking terms at the time. Appellant showed up at the house on June 10, 2020, and was banging on the front and back doors. When the victim did not open the door, appellant kicked the back door open and began yelling at her about how long he had been outside of the house. The victim testified that appellant grabbed her neck or throat.

{¶ 4} While appellant was at the victim's house, appellant's female friend, D.B., arrived at the house to pick appellant up. The victim asserted that she spoke to her friend on the phone and told her what happened with appellant. The friend called the victim's mother who was at work at the time. The victim's mother, M.C., left work and headed home. She called the police on her way home from work. The victim's friend and the friend's mother also came to the victim's house.

{¶ 5} Officers from the Euclid Police Department received a call about a male that was on the roof of the victim's house. Officers responded to the victim's house and searched the perimeter around the house. Euclid Police Officer Banary testified at trial that another officer searched inside the house. The officers did not encounter appellant when they initially arrived. The officers spoke with the victim and D.B. about what transpired.

{¶ 6} The victim testified that she was speaking to everyone — her parents, her friend, her friend's mother, and the officers — about what transpired. As she was speaking with the group in the front yard, appellant came out of her house through the front door. (Tr. 87.) Appellant walked out of the house approximately 15 to 20 minutes after officers had arrived at the scene. When he came out of the house, appellant disputed the statements that the victim provided to police — particularly the victim's assertion that appellant put his hands on her.

{¶ 7} Appellant, on the other hand, asserted that he came to the victim's house to pick up his welding equipment that he needed for work that morning. Appellant explained that he did not kick open or intentionally break down the back door. Rather, he claimed that the door accidentally broke when he was banging on it. Appellant claimed that he was knocking and banging on the front and back doors for approximately 30 minutes before the victim let him inside.

{¶ 8} Appellant testified that the victim let him into the house through the front door, and they got into an argument. Appellant denied putting his hands on the victim or grabbing her neck. Appellant asserted that D.B. arrived at the house

to pick him up, and that she went into the house to speak with the victim. Appellant testified that when the police arrived, the victim thought her mother was arriving home from work and she told him to hide in the house. Appellant hid inside the house and the victim and D.B. went outside to speak with the responding officers.

{¶ 9} In DL-20-105258, appellant was charged on June 11, 2020, in a five-count complaint with aggravated burglary, two counts of robbery, assault, and criminal damaging or endangering. The aggravated burglary count alleged that appellant trespassed in the victim's house with the purpose of committing the criminal offense of theft.

{¶ 10} Trial commenced on August 20, 2020. The juvenile court addressed the state's motion to amend the complaint. The state sought to amend the complaint by (1) dismissing the robbery offenses and (2) amending the criminal offense underlying the aggravated burglary offense from theft to assault and/or criminal damaging or endangering. The juvenile court granted the state's motion to amend the complaint.

{¶ 11} The state called the victim, the victim's mother, and Officer Banary to testify at trial. The defense moved for a Crim.R. 29 judgment of acquittal at the close of the state's case. The juvenile court denied defense counsel's motion.

{¶ 12} The defense called appellant and his friend D.B. to testify at trial. At the close of trial, the juvenile court found appellant delinquent of aggravated burglary, assault, and criminal damaging or endangering.

{¶ 13} A magistrate held a dispositional hearing on September 28, 2020. Regarding the aggravated burglary count, the magistrate ordered appellant to be committed at Ohio Department of Youth Services ("ODYS") for a minimum of one year and a maximum period not to exceed his twenty-first birthday. The magistrate did not render disposition at this time on the assault or criminal damaging counts.

{¶ 14} The juvenile court issued a judgment entry on October 29, 2020, approving and adopting the magistrate's decision committing appellant to the legal custody of ODYS. The juvenile court issued a judgment entry on October 30, 2020, overruling appellant's objections to the magistrate's decision finding appellant delinquent of aggravated burglary, assault, and criminal damaging.

{¶ 15} Appellant filed the instant appeal challenging the juvenile court's October 29 and 30, 2020 judgment entries in DL-20-105258. On April 22, 2021, this court remanded the matter to the juvenile court to render disposition on the assault and criminal damaging counts.[1]

{¶ 16} On May 12, 2021, the juvenile court entered disposition on the assault and criminal damaging counts. The juvenile court ordered that appellant be released, noting that appellant had completed placement and aftercare, performed community service, and had not contacted the victim.

{¶ 17} In this appeal, appellant assigns three errors for review:

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[1] A juvenile court must render a disposition as to each count for which a juvenile is adjudicated delinquent in order for a final appealable order capable of invoking this court's jurisdiction to exist. *See In re D.S.*, 8th Dist. Cuyahoga No. 95803, 2011-Ohio-5250; *In re A.H.*, 8th Dist. Cuyahoga No. 95661, 2011-Ohio-2038.

I. The trial court erred by relying on C.C.'s testimony to adjudge A.T. delinquent as the victim's testimony was so unreliable that the manifest weight of the evidence is not proven beyond a reasonable doubt.

II. The trial court erred by admitting three (3) photographs which were duplicates and not originals and were smaller than and lighted than the originals.

III. The trial court erred by finding that the state failed to prove all necessary elements of aggravated burglary.

{¶ 18} For ease of discussion, appellant's assignments of error will be addressed out of order.

II. Law and Analysis

A. Admission of Photographs

{¶ 19} In his second assignment of error, appellant argues that the juvenile court erred in admitting three photographs of the victim, state's exhibits Nos. 25, 26, and 27, that were taken on June 10, 2020.

{¶ 20} The victim testified about these photographs at trial. The victim asserted that state's exhibit No. 25 was a picture of her that was taken on June 10, 2020. The victim testified that state's exhibit No. 26 was a photograph of her neck that depicted "[r]ed scars" or redness of the skin on the side of her neck. (Tr. 88.) The victim testified that appellant's hand caused the redness. The victim asserted that state's exhibit No. 27 was another picture of her neck that showed "[r]ed bruises" that were caused by appellant's hands. (Tr. 88-89.)

{¶ 21} Following the victim's testimony, defense counsel asked the prosecutor if she had other copies of the photographs that were presented to the victim. Defense counsel asserted that the photographs she received were "way

smaller" than the photographs presented at trial. The prosecutor explained, "I have the exhibits slightly smaller than what I have, your Honor. Sorry. I can get better copies." (Tr. 89.) Defense counsel had an opportunity to review the photographs presented at trial by the state. (Tr. 89.)

{¶ 22} At the close of the state's case, defense counsel objected to the admission of state's exhibits Nos. 25, 26, and 27 on the basis that "they appear to be different quality than the [photographs] provided to [defense counsel]." (Tr. 147.) The prosecutor explained that the photographs the state sought to introduce into evidence were printouts of the same electronic photographs that were provided to defense counsel in discovery. (Tr. 147.) Defense counsel acknowledged that she had an opportunity to observe the photographs that the state sought to admit. (Tr. 147.) Finally, the juvenile court confirmed that defense counsel had an electronic PDF file of the photographs. Following this discussion, the juvenile court admitted the photographs into evidence over defense counsel's objections.

{¶ 23} In this appeal, appellant contends that the trial court erred by admitting the photographs into evidence because (1) the photographs were not properly authenticated by the officer that took the photographs, and (2) the photographs were duplicates rather than originals, and a genuine issue existed regarding the trustworthiness of the photographs.

{¶ 24} The admission of photographs is left to the sound discretion of the trial court. *State v. Biros*, 78 Ohio St.3d 426, 444, 678 N.E.2d 891 (1997), citing *State v. Landrum*, 53 Ohio St.3d 107, 121, 559 N.E.2d 710 (1990). This court will

not disturb a trial court's decision to admit or exclude evidence absent an abuse of that discretion. *Cleveland v. Alrefaei*, 2020-Ohio-5009, 161 N.E.3d 53, ¶ 27 (8th Dist.). An abuse of discretion connotes an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 25} First, pursuant to Evid.R. 901(A), the "requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

> Ohio courts have held that a "photograph is admissible if it is shown to be an accurate representation of what it purports to represent. *It is unnecessary to show who took the photograph* or when it was taken, provided there is testimony that the photograph is a fair and accurate representation of what it represents." *State Farm Mut. Auto. Ins. Co. v. Anders*, 197 Ohio App.3d 22, 2012-Ohio-824, 965 N.E.2d 1056, ¶ 30 (10th Dist.).

(Emphasis added.) *State v. Padgette*, 2020-Ohio-672, 152 N.E.3d 504, ¶ 12 (8th Dist.).

{¶ 26} In the instant matter, the photographs were properly authenticated by the victim. The victim testified that the three photographs were taken of her, and specifically her neck, following the encounter with appellant on June 10, 2020. The victim could sufficiently confirm that the photographs accurately represented herself and her neck, and the state was not required to call upon the officer that took the photographs in order to properly authenticate them. Accordingly, appellant's authentication argument is misplaced.

{¶ 27} Second, appellant argues that the photographs presented by the state were "duplicates," pursuant to Evid.R. 1001(4), rather than "originals," pursuant to Evid.R. 1001(3). Appellant's argument is misplaced and unsupported by the record.

{¶ 28} Evid.R. 1002, known as the "best evidence" rule, provides, "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio." Evid.R. 1001(3) provides that "[a]n 'original' of [a] photograph includes the negative or any print therefrom. *If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'*" (Emphasis added.) *See State v. Arafat*, 8th Dist. Cuyahoga No. 85847, 2006-Ohio-1722, ¶ 158, fn. 3.

{¶ 29} In the instant matter, the original electronic photographs were stored in a computer in the form of PDF files. The state shared the PDF files containing the original electronic photographs with defense counsel during the exchange of discovery.

{¶ 30} The photographs introduced at trial and admitted into evidence were printouts of the original electronic photographs stored in the computer. (Tr. 147.) Defense counsel had an opportunity to review the printouts of the original electronic photographs when they were authenticated by the victim and before they were admitted into evidence. (Tr. 88-89, 147.) Accordingly, the photographs that were admitted into evidence qualify as originals under Evid.R. 1001(3). Appellant's

argument that the photographs qualified as duplicates pursuant to Evid.R. 1001(4) is misplaced. *See State v. Jennings*, 7th Dist. Mahoning No. 08-MA-181, 2009-Ohio-6536, ¶ 30, citing *State v. Gregory*, 12th Dist. Clinton No. CA2006-05-016, 2006-Ohio-7037, ¶ 4 ("The photograph was printed directly from the digital computer system on which it was recorded. It was not a copy or a duplicate. It was not copied, rerecorded, or reproduced by any other means. Photograph prints from a digital program qualify as "originals" under Evid.R. 1001(3).").

{¶ 31} Appellant further argues that because the photographs that were admitted into evidence were duplicates, rather than originals, Evid.R. 1003 applies. Appellant's reliance on Evid.R. 1003 is misplaced.

{¶ 32} As noted above, the record reflects that the photographs that were entered into evidence were original photographs that were not modified by the state. These photographs were printed out directly from the PDF files containing the original electronic photographs. Therefore, Evid.R. 1003, governing the admissibility of duplicates, is inapplicable.

{¶ 33} Appellant asks this court to compare the three photographs admitted into evidence at trial and the photographs provided to defense counsel during discovery with which appellant supplemented the record on February 13 and 17, 2021. Appellant appears to argue that a "genuine issue of the duplicate photographs' trustworthiness was raised at trial, and their admission as evidence was objected to on that basis." Appellant's brief at 20. It is unclear whether appellant is questioning

the authenticity of the photographs admitted into evidence, the photographs provided to defense counsel during discovery, or both.

{¶ 34} Nevertheless, the photographs with which appellant supplemented the record were not admitted into evidence at trial. Evidence outside the record cannot be used in a direct appeal. *See State v. Hartman*, 93 Ohio St.3d 274, 299, 754 N.E.2d 1150 (2001); *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus ("A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter."). Accordingly, we decline to consider these photographs in adjudicating appellant's direct appeal.

{¶ 35} After reviewing the three photographs that were admitted into evidence at trial, we are unable to discern any redness or discoloration on the victim's neck in exhibit No. 25. This photograph is a picture of the victim from the waist up, who appears to be sitting down, and is taken from a further distance. However, state's exhibits Nos. 26 and 27, which are close-up photographs of the victim's neck and throat, do show redness and discoloration on the victim's neck. The redness and discoloration displayed in these photographs is consistent with the victim's testimony.

{¶ 36} Finally, assuming, arguendo, that the photographs were improperly admitted, we find that any error in the admission of the photographs was harmless. "Where evidence has been improperly admitted in derogation of a criminal defendant's constitutional rights, the admission is harmless 'beyond a reasonable

doubt' if the remaining evidence alone comprises 'overwhelming' proof of defendant's guilt." *State v. Williams*, 6 Ohio St.3d 281, 290, 452 N.E.2d 1323 (1983).

{¶ 37} In the instant matter, the victim testified that when she was asked about the "red stuff" on her neck, she reported that appellant grabbed her throat. (Tr. 110-111.) The victim's mother testified that she observed "welts" on the victim's neck when she returned home from work, and that it was "quite evident" that appellant put his hands on the victim. (Tr. 119, 127.)

{¶ 38} Officer Banary testified that he was informed that officers observed marks on the victim's neck. This observation is documented in his police report.

{¶ 39} Accordingly, even if the photographs were not admitted at trial, the state's remaining evidence, standing alone, constituted overwhelming proof that appellant assaulted the victim by grabbing her neck or throat and causing physical harm thereto.

{¶ 40} For all of the foregoing reasons, appellant's second assignment of error is overruled. The trial court did not err or abuse its discretion in admitting the photographs.

B. Sufficiency

{¶ 41} In his first and third assignments of error, appellant challenges the sufficiency of the evidence supporting his adjudications of delinquency for aggravated burglary and assault.

{¶ 42} In determining whether a juvenile court's adjudication of delinquency is supported by sufficient evidence, this court applies the same standard of review applicable to criminal convictions. *In re L.R.F.*, 2012-Ohio-4284, 977 N.E.2d 138, ¶ 12 (8th Dist.), citing *In re Watson*, 47 Ohio St.3d 86, 91, 548 N.E.2d 210 (1989). The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. The 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. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

1. Aggravated Burglary

{¶ 43} In his third assignment of error, appellant argues that his adjudication of delinquency for aggravated burglary was not supported by sufficient evidence. In support of his sufficiency challenge, appellant contends that the state did not prove beyond a reasonable doubt that appellant committed a trespass offense. Appellant's argument is unsupported by the record.

{¶ 44} The juvenile court adjudicated appellant delinquent of aggravated burglary, in violation of R.C. 2911.11(A)(1), which provides:

> (A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:

> (1) The offender inflicts, or attempts or threatens to inflict physical harm on another[.]

{¶ 45} Pursuant to the state's amendment of the complaint at the outset of trial, the state had to prove that appellant trespassed in an occupied structure with purpose to commit the criminal offenses of assault, in violation of R.C. 2903.13(A), and/or criminal damaging or endangering, in violation of R.C. 2909.06(A)(1).

{¶ 46} The victim testified at trial that appellant came into her house on June 10, 2020, without permission. Appellant entered the house by kicking the back door in. When appellant told the victim on June 9, 2020, that he was coming to her house to get his welding equipment, the victim told appellant he was not allowed to come over. The victim explained how appellant entered the home:

> The first time [appellant] was knocking on the front door and the back, but the night before *I told him he not allowed to come to my house* because we wasn't on talking terms, we wasn't doing like — we wasn't even dating. So I said, *you not allowed to come here* and not look here, but he said I'm coming to get my stuff, so I said, you're not allowed to come here and I stopped responding after that.

(Emphasis added.) (Tr. 81-82.)

{¶ 47} Although she testified that appellant has been to the house on prior occasions and he has never come over without an invitation, the victim confirmed that appellant did not have permission to come into the house on June 10, 2020. (Tr. 87.) The victim's mother testified at trial that appellant came to her house on June 10, 2020, without permission.

{¶ 48} The testimony of the victim and the victim's mother, if believed, sufficiently established the requisite element of trespassing.

{¶ 49} Appellant further argues that the state presented no evidence regarding appellant's purpose in committing an alleged trespass offense and that "no other evidence was presented to indicate that [appellant's] purpose in entering the home changed at any time." Appellant's brief at 25. Appellant's argument is unsupported by the record.

{¶ 50} The victim testified that on June 9, 2020, appellant told her that he was going to come to her house the next day to get his welding equipment that he left at the house on a prior occasion. Appellant also testified at trial that he went to the victim's house on June 10, 2020, to get his welding equipment.

{¶ 51} Although appellant may not have intended to commit a criminal offense when he went to the victim's house or even when he initially broke into the house through the back door, the state's evidence, if believed, established that appellant formed the intent to commit the criminal offense of assault during the trespass.

{¶ 52} In *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, the Ohio Supreme Court explained that for purposes of the offense of aggravated burglary, the intent to commit a separate criminal offense may be formed during the trespass. *Id.* at ¶ 33, citing *State v. Fontes*, 87 Ohio St.3d 527, 721 N.E.2d 1037 (2000), syllabus (to be guilty of aggravated burglary, "a defendant may form the purpose to commit a criminal offense at any point during the course of a trespass").

{¶ 53} The victim testified at trial that after hearing knocking on the front and back doors, she heard "two big booms" on the back door. She ran downstairs and as she was looking at the back door, it "just came wide open." (Tr. 83.) When the door flew open, the victim saw appellant. Appellant grabbed the victim and asked if she knew how long he had been outside. Appellant kept repeating this question. She told him to stop grabbing her.

{¶ 54} The victim testified that she was standing outside of the house with her mom, her friend, and her friend's mom. At this point, the victim told the police that appellant grabbed her. The victim explained, "[t]hey said, what's the red stuff on your neck? I said, [appellant] grabbed me by my throat."[2] (Tr. 110-111.) The victim confirmed that she told the group (her mom, her friend, her friend's mom, and the police) that appellant grabbed her when they asked her about the red stuff on her neck. (Tr. 111.)

{¶ 55} As noted above, the state presented three photographs that were taken of the victim on June 10, 2020. State's exhibits Nos. 25-27. The victim testified that state's exhibit No. 26 was a photograph of her neck that depicted "[r]ed scars" or redness on the side of her neck. (Tr. 88.) The victim testified that appellant's hand caused the redness. The victim asserted that state's exhibit No. 27 was another picture of her neck that showed "[r]ed bruises" that were caused by appellant's hands. (Tr. 88-89.)

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[2] It is unclear who specifically asked the victim about the "red stuff" on her neck.

{¶ 56} The victim's June 10, 2020 written statement was introduced at trial. Therein, the victim asserted that appellant grabbed her and was screaming after he broke into the house. (Tr. 103.) The victim's June 12, 2020 written statement was introduced at trial. Therein, the victim asserted that she went downstairs after hearing two big "booms" on the back door. She encountered appellant inside the house, and appellant grabbed her. (Tr. 105.)

{¶ 57} The victim's mother, M.C., testified at trial that when she returned home from work, the victim was distraught and very nervous. M.C. explained, "I did notice [the victim] had like welts or whatever across her neck." (Tr. 119.)

{¶ 58} On cross-examination, M.C. testified that she asked the victim if appellant put his hands on her. The victim answered affirmatively. M.C. explained, "[i]t was quite evident [that appellant put his hands on the victim]." (Tr. 127.)

{¶ 59} On redirect-examination, the prosecutor asked M.C. why she asked the victim if appellant put his hands on her. M.C. testified,

> Because first of all I didn't even know if [appellant] had got in the window. I didn't know. My mind was racing a million miles. I didn't know what to think. But then when [the victim] turned her head is when I asked her did [appellant] put his hands on you, and she just looked at me with this blank look, but *I already seen the works*.

(Emphasis added.) (Tr. 128-129.)

{¶ 60} Euclid Police Officer Banary testified that the victim reported that appellant grabbed her by the neck. Officer Banary's report from the incident reflects that another officer observed marks on the victim's neck: "I was informed that [Euclid Police Officer Flagg] and other officers observed the marks to [the victim's]

neck which I was able to go into the photographs of the scene and that's where I could see the marks on the neck." (Tr. 140.)

{¶ 61} After reviewing the record, we find that the state's evidence, if believed, sufficiently established that during the trespass — after appellant broke into the house through the back door — appellant formed the intent to assault the victim, and did, in fact, assault the victim. Accordingly, the state established that appellant trespassed in the victim's house, an occupied structure, with the purpose of committing the criminal offense of assault.

{¶ 62} For all of the foregoing reasons, we find that appellant's adjudication of delinquency for aggravated burglary was supported by sufficient evidence. Appellant's third assignment of error is overruled.

2. Assault

{¶ 63} In addition to challenging the manifest weight of the evidence, appellant appears to raise a sufficiency challenge to his assault adjudication of delinquency in his first assignment of error.

{¶ 64} As an initial matter, we note that "sufficiency" and "manifest weight" challenges present two distinct legal concepts. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 23. Furthermore, App.R. 16(A) requires a party to separately argue each assignment of error. "Pursuant to App.R. 12(A)(2), an appellate court may disregard any assignment of error, or portion thereof, if the appellant fails to make a separate argument." *Cleveland v. Taylor*, 8th Dist.

Cuyahoga No. 109371, 2021-Ohio-584, ¶ 87, citing *State v. Wells*, 8th Dist. Cuyahoga No. 98388, 2013-Ohio-3722, ¶ 55.

{¶ 65} Appellant contends that the victim failed to testify about any pain, injury, illness, or impairment resulting from appellant's conduct of "grabbing" her, and as a result, the state failed to prove the element of physical harm.

{¶ 66} The juvenile court adjudicated appellant delinquent of assault, in violation of R.C. 2903.13(A), which provides, "[n]o person shall knowingly cause or attempt to cause physical harm to another[.]" R.C. 2901.01(A)(3) defines "physical harm to persons" as "any injury, illness, or other physiological impairment, *regardless of its gravity or duration*." (Emphasis added.)

{¶ 67} "'[W]hen there is no tangible, physical injury such as a bruise or cut, it becomes the province of the [trier of fact] to determine whether, under the circumstances, the victim was physically injured, after reviewing all of the evidence surrounding the event.'" *State v. Barnes*, 8th Dist. Cuyahoga No. 87153, 2006-Ohio-5239, ¶ 17, quoting *State v. Perkins*, 11th Dist. Portage No. 96-P-0221, 1998 Ohio App. LEXIS 1213, 7 (Mar. 27, 1998).

{¶ 68} As noted above, the state's evidence established that appellant grabbed the victim's neck or throat after breaking into the house. M.C., the victim's friend, or the friend's mother inquired about the "red stuff" on the victim's neck. M.C. testified that she observed "welts or whatever across [the victim's] neck." (Tr. 119.) This observation prompted M.C. to inquire whether appellant put his hands on the victim.

{¶ 69} Euclid police officers that responded to the scene observed markings on the victim's neck. Finally, the victim testified about the photographs of her neck, taken on the day of the incident, that showed "[r]ed scars" or "[r]ed bruises" caused by appellant's hands.

{¶ 70} Construing the testimony and the state's evidence in a light most favorable to the state, as we are required to do, we find that there was sufficient evidence establishing that appellant caused a tangible injury or impairment — red bruising or scarring — to the victim's neck when he grabbed her. Accordingly, the state sufficiently established that the victim suffered physical harm.

{¶ 71} For all of the foregoing reasons, appellant's first assignment of error is overruled to the extent that he challenges the sufficiency of the evidence supporting his adjudication of delinquency for assault.

C. Manifest Weight

{¶ 72} Also in his first assignment of error, appellant argues that his adjudications of delinquency are against the manifest weight of the evidence.

> In determining whether a juvenile court's adjudication of delinquency is against the manifest weight of the evidence, the applicable standard of review is the same standard applied in adult criminal convictions. *In re N.J.M.*, 12th Dist. Warren No. CA2010-03-026, 2010-Ohio-5526, ¶ 34; *see In re M.J.C.*, 12th Dist. Butler No. CA2014-05-124, 2015-Ohio-820, ¶ 28. In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion. *Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, at ¶ 12. A reviewing 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." *Thompkins*, 78

> Ohio St.3d at 388, 678 N.E.2d 541. A conviction should be reversed as against the manifest weight of the evidence only in the most "exceptional case in which the evidence weighs heavily against the conviction." *Id*.

In re A.W., 8th Dist. Cuyahoga No. 103269, 2016-Ohio-7297, ¶ 43.

{¶ 73} In support of his manifest weight challenge, appellant argues that (1) the victim's testimony at trial was inconsistent and included "blatant lies" (Appellant's brief at 11); (2) the victim's testimony conflicted with appellant's testimony; and (3) the magistrate found the victim's testimony to be unreliable during the August 28, 2020 hearing.

{¶ 74} First, we acknowledge that there were minor inconsistencies between the victim's statements to police at the time of the incident, the victim's written statements, and the victim's testimony at trial. For instance, the victim testified on cross-examination that she advised the responding officers that she did not know where appellant went after he broke into the house. A police report from the incident, however, indicated that the victim told officers that appellant fled down the street on foot. The victim testified that her and appellant were not talking at the time of the incident. The victim acknowledged that text messages were exchanged between her and appellant on June 9, 2020, and that these text messages constituted "talking." (Tr. 97.)

{¶ 75} In her June 10, 2020 written statement, the victim stated that her friend was calling her when appellant broke into the house and grabbed her, but she did not answer the phone. Rather, the victim texted her friend to come to the house

and get her. (Tr. 103.) In her June 12, 2020 written statement, the victim asserted that she was on the phone with her friend when appellant broke into the house. (Tr. 105.) The victim acknowledged at trial that her written statements were "a little inaccurate[.]" (Tr. 107.) She was unable to explain on cross-examination why her second written statement contained details that were not in her first written statement. (Tr. 108.) However, on redirect-examination, the victim explained that she was scared when she wrote both the first and second statements, but less scared at the time she wrote the second statement on June 12.

{¶ 76} We further acknowledge that the victim's trial testimony was contradicted by other evidence. For instance, the victim testified that appellant's friend D.B. provided the responding officers with a description of appellant's clothing. (Tr. 86.) Officer Banary testified, however, that the victim, not D.B., told officers the direction that appellant ran from the house and provided a description of appellant's clothing. Officer Banary confirmed that the victim told him more than once that appellant fled on foot.

{¶ 77} Although there were minor inconsistencies between the victim's statements to police and her trial testimony, we find that the victim's account of the incident was largely consistent in all material respects.

> [A] defendant is not entitled to reversal on manifest weight grounds merely because certain aspects of a witness' testimony are inconsistent or contradictory. *See, e.g.*, [*State v. Nitsche*, 2016-Ohio-3170, 66 N.E.3d 135, ¶ 45 (8th Dist.)]; *see also State v. Wade*, 8th Dist. Cuyahoga No. 90029, 2008-Ohio-4574, ¶ 38 ("'A conviction is not against the manifest weight of the evidence solely because the [factfinder] heard inconsistent testimony.'"), quoting *State v. Asberry*, 10th Dist.

> Franklin No. 04AP-1113, 2005-Ohio-4547, ¶ 11; *State v. Mann*, 10th Dist. Franklin No. 10AP-1131, 2011-Ohio-5286, ¶ 37 ("'While [a factfinder] may take note of the inconsistencies and resolve or discount them accordingly, * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence.'"), quoting *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 Ohio App. LEXIS 2245, 7 (May 28, 1996).

State v. Flores-Santiago, 8th Dist. Cuyahoga No. 108458, 2020-Ohio-1274, ¶ 40.

{¶ 78} In the instant matter, although there were some minor inconsistencies between the victim's initial statements to police and trial testimony, the record reflects that the victim's statements and testimony were consistent in many material respects. The victim's testimony is credible and consistent that appellant forcibly broke into the house through the back door without permission and grabbed her neck or throat.

{¶ 79} Furthermore, we find that the aforementioned inconsistencies regarding (1) whether the victim told responding officers that she did not know where appellant was or that appellant ran down the street, (2) whether the victim or D.B. provided a description of appellant's clothing to responding officers, and (3) whether the victim was on the phone with her friend at the time appellant broke in and grabbed her, or if they spoke afterwards should not control the outcome of this case. *See State v. Solomon*, 8th Dist. Cuyahoga No. 109535, 2021-Ohio-940, ¶ 64. "Minor inconsistencies in witness testimony will not render a conviction so against the manifest weight of the evidence as to cause a miscarriage of justice." *State v. McNamara*, 8th Dist. Cuyahoga No. 104168, 2016-Ohio-8050, ¶ 38. The

weight of the evidence supports appellant's adjudications of delinquency, and the juvenile court did not lose its way and create a manifest miscarriage of justice.

{¶ 80} While we acknowledge that inconsistencies in the victim's testimony and statements to police, the record reflects that the victim provided consistent and generally credible testimony regarding the critical questions in this case — whether appellant forcibly broke into her house and assaulted her on June 10, 2020.

{¶ 81} Second, the record reflects that during a post-trial hearing on August 28, 2020, a magistrate questioned the victim's credibility. The magistrate explained, "I do not believe [the victim] told the whole truth about what happened; however, there was evidence to show that — there's testimony of markings that there was physical contact with the assault and so that is my finding." (Tr. 203.) At the end of the August 20, 2020 hearing, the magistrate appeared to question why the victim called a friend rather than the police after appellant broke into the house.

{¶ 82} The record also reflects that the magistrate questioned appellant's credibility at the end of the August 20, 2020 hearing. The magistrate appeared to reject appellant's testimony that he did not intentionally kick or break the back door down. The magistrate explained, "the force used to bust this door was pretty bad. This was not, oh, I just gently hit [the door]. I installed doors. It's a pretty hard hit." (Tr. 190.)

{¶ 83} There were aspects of appellant's testimony that were contradicted by other evidence. For instance, appellant testified that he was hiding inside the victim's house when police arrived at the scene, and he maintained that the

responding officers never entered or searched the inside of the house. Officer Banary testified that although he did not personally search inside of the house, another officer, Officer Moore, looked inside the house upon arrival and did not encounter anyone inside. (Tr. 133.) A reasonable inference can be drawn that if appellant was, in fact, hiding inside the house as he claimed, Officer Moore would have encountered him when he searched inside.

{¶ 84} Furthermore, appellant testified that he was knocking or banging on the back door and he heard the door break. He explained that the back door "cracked in, like dented in, like you could see it cracked. Then that's when I had stopped [banging]." (Tr. 172-174.) Appellant denied kicking the back door.

{¶ 85} Appellant explained that he did not mean to break the back door when he was banging on it. However, he was mad that the victim was not opening the door so he was banging "with rage." (Tr. 175.)

{¶ 86} The victim testified that she heard "two big booms" on the back door, after which the door "just came wide open." (Tr. 83.) She explained that the wood on the door was "cracked open." The victim opined that the two big "booms" she heard could not be made by a hand.

{¶ 87} The victim's mother testified that the back door was busted off the hinges. Officer Banary testified that the back door was "heavily damaged." (Tr. 139.) He explained that there was damage to both the door itself and the door frame.

{¶ 88} Appellant testified that he arrived at the victim's house around 9:00 a.m., and that he had to be at work around 10:30 a.m. However, D.B. testified

that she came to pick appellant up at the victim's house and they were just going to "chill." (Tr. 152.)

{¶ 89} As noted above, the victim and appellant offered entirely contradictory accounts of what transpired at the victim's house on June 10, 2020. Appellant testified that he accidentally broke the back door when he was banging on it, the victim let him into the house through the front door, he did not put his hands on the victim or grab her neck, and that the victim told him to hide inside the house when the police arrived because she thought her mother was home. The victim, on the other hand, testified that appellant forcibly broke into the house through the back door, without permission, yelled and screamed at her, and grabbed her neck.

{¶ 90} In adjudicating appellant delinquent of aggravated burglary, assault, and criminal damaging, it is evident that the juvenile court ultimately concluded that the victim's version of the incident was more credible or believable than the accounts provided by appellant and D.B. The juvenile court was in the best position to make this determination.

{¶ 91} Appellant and the victim testified about a prior occasion during which the victim "hid" appellant at her house. The victim asserted that around January 2020, appellant ran away from home and was staying at her house. The police came to the house looking for appellant, and she told the police he was not there. (Tr. 113-114.)

{¶ 92} Appellant testified that sometime between February 2020 and June 2020, he was staying at the victim's house, rather than returning home to

his own house. His parents sent the police to the victim's house. When the police arrived, the victim hid him in a cubby hole and told the police he was not there. Officers searched the house and found appellant, and he returned home.

{¶ 93} Appellant's friend D.B., who came to the victim's house at the time of the incident to pick appellant up, testified that when police arrived at the victim's house, the victim told appellant to hide. D.B. testified on cross-examination that she is close with appellant, they are like brother and sister, and that they always look out for each other.

{¶ 94} D.B. testified that when she arrived at the victim's house, she sat in her car in the driveway and heard appellant and the victim arguing. She saw appellant putting his welding equipment on the front porch. D.B. eventually went inside the house to speak with the victim. When she spoke with the victim, the victim did not mention anything to D.B. about appellant grabbing her. D.B. did not observe any marks on the victim. D.B. testified that the victim advised her that appellant entered the house through the front door. D.B. acknowledged on cross-examination that she was not with appellant and the victim the entire time, and she was not at the house when appellant went inside.

{¶ 95} The juvenile court, as the trier of fact, had sufficient information about the inconsistencies in the victim's statements to police and her trial testimony, the nature of the relationship between appellant and the victim, including the fact that the victim hid appellant in her house on a prior occasion, and the relationship between appellant and D.B. to assess the credibility of the victim and her testimony.

See Solomon, 8th Dist. Cuyahoga No. 109535, 2021-Ohio-940, at ¶ 59. The trial court also had sufficient information to assess the credibility of appellant. *See State v. Davis*, 8th Dist. Cuyahoga No. 107925, 2019-Ohio-4672, ¶ 66; *State v. Sumlin*, 8th Dist. Cuyahoga No. 108000, 2020-Ohio-1600, ¶ 58. As noted above, in adjudicating appellant delinquent, the juvenile court ultimately determined that the victim was more truthful and credible than appellant.

{¶ 96} The state's theory of the case at trial was that appellant forcibly and without permission broke into the victim's house through the back door and grabbed the victim's neck or throat causing red bruising or scarring. On the other hand, the defense's theories at trial were that (1) the victim was "playing games" with appellant when she did not answer the door when appellant was knocking, (2) the victim had been lying to her mom about the ongoing nature of her relationship with appellant, evidenced by the fact that the mom was unaware that victim and appellant were in contact with one another at the time of the incident, and (3) the red marks on the victim's neck were either a hickey that appellant gave to her or were consistent with the victim having been sleeping and just getting out of bed.

{¶ 97} The defense also appeared to suggest that the victim's mother did not like appellant after an incident that occurred on February 7, 2020, for which appellant was charged in DL-20-103649, and as a result, the mother pressured the victim into saying that appellant grabbed her. (Tr. 166-167.) The juvenile court consolidated DL-20-103649 with the juvenile case at issue in this appeal (DL-20-105258). The victim testified at trial that appellant ended their relationship during

an argument on February 6, 2020. (Tr. 28.) At school the following day, they got into another argument and appellant wanted to look through the victim's phone to see who she had been talking to. Appellant also got into a physical altercation with another male student. After this altercation, the victim testified that as she was walking to class, appellant grabbed her hair and the back of her head and "smashed it" on the railing in a stairwell. (Tr. 30.) Appellant was charged with felonious assault, assault, and disorderly conduct. The juvenile court adjudicated appellant delinquent of felonious assault and disorderly conduct.

{¶ 98} "'[A] conviction is not against the manifest weight of the evidence simply because the [finder of fact] rejected the defendant's version of the facts and believed the testimony presented by the [prosecution].'" *State v. Jallah*, 8th Dist. Cuyahoga No. 101773, 2015-Ohio-1950, ¶ 71, quoting *State v. Hall*, 4th Dist. Ross No. 13CA3391, 2014-Ohio-2959, ¶ 28. The juvenile court, as the finder of fact, did not lose its way in resolving the conflicting theories based on the evidence presented at trial.

{¶ 99} After reviewing the record, we find appellant's adjudications of delinquency are not against the manifest weight of the evidence. We do not find that in resolving conflicts in the evidence, the juvenile court, as the trier of fact, clearly lost its way in adjudicating appellant delinquent of aggravated burglary, assault, and criminal damaging. Furthermore, this is not the exceptional case in which the evidence weighs heavily against appellant's adjudications of delinquency.

{¶ 100} For all of the foregoing reasons, appellant's first assignment of error is overruled to the extent that he challenges his adjudications of delinquency on manifest weight grounds.

III. Conclusion

{¶ 101} After thoroughly reviewing the record, we affirm appellant's adjudications of delinquency. The juvenile court did not err or abuse its discretion in admitting the photographs of the victim's neck. Appellant's adjudications of delinquency for aggravated burglary, assault, and criminal damaging were supported by sufficient evidence and are not against the manifest weight of the evidence.

{¶ 102} 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 adjudications having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of commitment.

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

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FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, A.J., and
ANITA LASTER MAYS, J., CONCUR