[Cite as *State v. Perry*, 2015-Ohio-2181.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26421
	:	
v.	:	Trial Court Case No. 2014-CR-292
	:	
JASON E. PERRY	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 5th day of June, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Jason E. Perry, appeals from his conviction in the Montgomery County Court of Common Pleas for one count of aggravated burglary following a jury trial. Perry contends his conviction was not supported by sufficient evidence and was also against the manifest weight of the evidence. He also claims the trial court erred in failing to provide a jury instruction explaining that the physical harm element of aggravated burglary needs to occur while the offender is trespassing. For the reasons outlined below, the judgment of the trial court will be affirmed.

Facts and Course of Proceedings

{¶ 2} On March 11, 2014, Perry was indicted for one count of aggravated burglary in violation of R.C. 2911.11(A)(1), a felony of the first degree; one count of abduction in violation of R.C. 2905.02(A)(2), a felony of the third degree; and one count of disrupting public services in violation of R.C. 2909.04(A)(3), a felony of the fourth degree. Perry pled not guilty to the charges and a four-day jury trial was held on August 4 through August 7, 2014. At trial, the State presented testimony from the victim, Jennifer Crider, who was Perry's girlfriend at the time of the alleged offenses. In addition, the State presented testimony from Crider's friends, Jordan McClain and Jason Farr, as well as Crider's father, Jeffrey Crider, and the investigating police officer, Mark Allison.

{¶ 3} Jennifer Crider testified that she and Perry met online in May 2013 through an online dating website. According to Crider, she later met Perry in person in June 2013 and entered into a romantic relationship with him after a few months of dating. Their relationship became more serious over time; however, Crider, who lived with her

two daughters and Jordan McClain, testified that Perry did not reside with her or have a key to her home.

{¶ 4} Continuing, Crider testified that at the end of December 2013, she and Perry went on vacation to Gatlinburg, Tennessee, and then returned to her home in West Carrollton, Ohio, on New Year's Eve. After they returned to her house, Crider testified that they began drinking whiskey to celebrate the New Year. Crider's two daughters were not at home that night, but McClain and Jason Farr were there celebrating with Perry and Crider. As part of the celebration, Crider testified that she had four or five half shots of whiskey, whereas Perry had four to five full shots of whiskey and two large glasses of whiskey and soda. During the course of their celebration, Crider testified that Perry became drunk. Crider testified that Perry was acting very happy and also strange, as he appeared to be flirting with McClain, who is male. In addition, Crider testified that later on in the evening, Perry entered the kitchen wearing only his boxer shorts, a t-shirt, and cowboy boots. At that point in time, Farr was the only other person with them in the house, and Crider testified that Farr left shortly thereafter.

{¶ 5} Once McClain and Farr were gone, Crider testified that she and Perry began to have sex in her bedroom. Crider explained that over the course of their relationship, she and Perry had engaged in "rough sex," which she defined as pulling hair, biting, smacking, and scratching on certain areas. She testified that on the night in question, she and Perry engaged in some of these activities, but claimed that the sex was not physically rough and did not last very long. Trial Trans., Vol I (Aug. 4, 2014), p. 15-16. Crider further testified that in the past, Perry had enjoyed it when she told him that he was not pleasing her. However, when Crider informed Perry that he was not pleasing her on

the night in question, Crider claimed that Perry "freaked out" and told her that he was going to leave. In response, Crider said she told Perry: "I think it's a good idea if you leave now, and I'm going to do the same." Trial Trans., Vol. I (Aug. 4, 2014), p. 16.

{¶ 6} Following her request for Perry to leave, Crider testified that she tried to grab her phone to call McClain, but that Perry took her phone and told her she was not calling anyone. Crider then testified that Perry grabbed her throat, pushed her across the bed and onto the floor while shouting expletives at her. As she was being choked, Crider noticed the candles in her bedroom had been knocked on the floor and she claimed that Perry stopped choking her so that they could pick up the candles. After tending to the candles, Crider testified that she ran to the front door in an attempt to leave, but Perry caught her and pinned her down with his legs. Crider claimed that her back was against the ground with Perry on top of her hitting her multiple times on the chest and at least once on the jaw. Crider testified that as she tried to fight off Perry she told him: "Please get off me. Please get out of my home. People are going to know you did this to me. You need to leave. I need my phone. Give me my phone." *Id*. at 22. According to Crider, Perry responded: "I'm not leaving and neither are you. Nobody is leaving. You're not going to call the cops. You're not going to keep me from my kids." *Id*. at 23.

{¶ 7} Crider testified that after several minutes of fighting, she decided to stop struggling because it was just making Perry more aggressive. She said that when Perry eventually let her up she offered him $1,000 to leave. Crider explained that $1,000 was double the amount she owed him for her half of the Gatlinburg vacation. According to Crider, Perry refused her offer and instead demanded $3,000. Crider explained that she did not have that kind of money, but wrote Perry a $1,000 check, which she later ripped up

when it became clear that Perry was not going to leave.

{¶ 8} Crider then testified that she sat on the arm of her couch near a window and drew the curtains open so someone might see her. Meanwhile, Crider testified that Perry was pacing back and forth in her house and yelling in her face. While Perry was pacing, Crider testified that she unlocked the window and climbed through it to escape. She claimed that when Perry ran out the front door after her, she was able to run back inside and lock the front door. However, by the time she locked the door, Perry had already climbed back inside her house through the unlocked window. After they were both back inside the house, Crider testified that she returned to the arm of the couch and Perry continued pacing. She testified that while all this was going on, she continually asked Perry to give her phone back and to get out of her house, but he still refused to leave.

{¶ 9} Since Perry would not leave and would not let her call the police, Crider testified that she told him to call anybody of his choosing because someone else needed to be there with them. According to Crider, Perry called the mother of his children, Lisa Langley. Crider testified that while Perry had Langley on speaker phone, she told Langley: "I'm not okay. He choked me. He hit me. He hurt me. And he refuses to leave my home. I am not okay." Trial Trans., Vol. I (Aug. 4, 2014), p. 33. Perry then told Langley that "it was rough sex, that we were just having sex, and that's all." *Id*.

{¶ 10} While Perry was talking with Langley, Crider testified that Perry began bringing his belongings and some of her own belongings to the front door. Crider testified that when Perry eventually left, he had taken a pair of her diamond earrings, her cell phone, and the gifts he had purchased her for Christmas. Crider later realized that

he had also taken the ripped up check and cashed it using his camera phone.

{¶ 11} After Perry left Crider's house, Crider testified that she locked all of her doors and left messages on Facebook for McClain and Farr asking them to come help her because Perry "went crazy" and she was scared. Crider testified that when McClain subsequently returned home, they slept for a few hours and then went to the West Carrollton police station where she reported the incident and had photos taken of her injuries. At trial, Crider confirmed that all of her injuries were inflicted by Perry during the early morning hours following their New Year's Eve celebration.

{¶ 12} McClain also testified at trial. According to McClain, Crider had no bruises or scratches on her body when he left her on New Year's Eve. However, McClain testified that upon receiving Crider's messages and returning home the next morning, he observed scratches and bruises on her neck, collar bone, and chest. McClain also testified that Crider was frantic and scared. Like McClain, Jason Farr also testified that he saw no bruises on Crider at the New Year's Eve party, and confirmed that he had received messages from Crider asking for help early the next morning. In addition, Crider's father testified that on the morning of the incident, Crider had a swollen jaw, bruised arms, and was physically shaking.

{¶ 13} Officer Mark Allison of the West Carrollton Police Department testified that he was the investigating officer assigned to the case after Crider reported the incident. Allison testified that when he interviewed Crider on January 2, 2014, he saw a yellow bruise on her jaw, numerous bruises on her upper chest and forearms, and scratches on her neck. Allison took additional photos of Crider's injuries as well as photos of her house. Allison further testified that he contacted Perry and that Perry denied having

Crider's phone or diamond earrings. According to Allison, Perry also claimed that he knew nothing about Crider's bruises.

{¶ 14} After the State rested, Perry testified in his defense and also presented testimony from Lisa Langley. Perry's testimony regarding the events of the night in question were in line with Crider's up to the point where everyone left Crider's home on New Year's Eve. Their testimony differed in that Perry claimed that he and Crider had consensual rough sex for a couple of hours, which included some biting and Perry putting his hands on Crider's throat. He also testified that at one point he and Crider "bounced and slid off the bed pretty hard." Trial Trans., Vol. II (Aug. 6, 2014), p. 239. Perry testified that Crider looked horrified after falling off the bed. He claimed that she made statements about violence and how she thought he was trying to hurt her. Perry, however, testified that he was not trying to hurt Crider and that he never hit her in the chest or face. He also testified that the only injury he inflicted on Crider that night was a bite mark on her chest, which he claims was the product of consensual rough sex.

{¶ 15} Additionally, Perry claimed that the cell phone he took from Crider was his phone. Perry testified that upon taking his phone, he called Langley and spoke with her while he collected his belongings. At trial, Perry identified phone records showing calls made from his phone to Langley early that morning. As Perry was talking to Langley, Perry testified that Crider jumped out the window. After Crider did this, Perry claimed that he exited the front door of the house to put his belongings in his car. He then testified that he realized he left his wallet and watch inside the house, so he tried to go back inside to get them, but Crider ran back in the house and locked the door. Perry testified that in order to retrieve his wallet and watch, he went through the unlocked

window and then left.

{¶ 16} Perry admitted that he took a necklace he had purchased Crider for Christmas, but claimed that he did not take her diamond earrings or cell phone. As for the $1,000 check, he testified that Crider had written the check to him earlier on New Year's Eve as repayment for their vacation, and that he had put the check in his wallet. When he went through the window to get his wallet, he claimed that the check had been removed and ripped into pieces, which he took with him.

{¶ 17} Perry's witness, Lisa Langley, testified that Perry called her around 3:10 a.m. on January 1, 2014, and asked if she would stay on the phone with him. Langley testified that during the call, Perry was trying to get his belongings out of Crider's house so that he could leave because he said Crider was acting crazy. She claimed that Crider got on the phone with her and said "he choked me," and Perry responded "[y]eah, that was during sex. * * * [I]f you feel like something is wrong, why don't we just call the police?" Trial Trans., Vol. II (Aug. 6, 2014), p. 280. According to Langley, Crider did not want to call the police. Langley also remembered Perry mentioning that Crider went out the window. In addition, Langley testified that Perry told her over the phone that he forgot his wallet and watch and that he had to go back in the house to retrieve them. Langley then testified that Perry's phone went dead, and that he called her back shortly thereafter as he was driving to her house.

{¶ 18} After hearing all the testimony and reviewing the evidence, the jury found Perry guilty of aggravated burglary, but not guilty of abduction or disrupting public services. The trial court then sentenced Perry to community control sanctions for a period not to exceed five years. Perry now appeals from his conviction, raising three

assignments of error for review.

First and Second Assignments of Error

{¶ 19} For purposes of convenience, we will address Perry's First and Second Assignments of Error together. They are as follows:

I. THE TRIAL COURT ERRED BY DENYING THE CRIMINAL RULE 29 MOTION AS TO THE COUNT OF AGGRAVATED BURGLARY BECAUSE THE VICTIM'S TESTIMONY STATES THAT THE NON-CONSENSUAL ASSAULT OCCURRED BEFORE THE ELEMENTS OF TRE[S]PASSING WERE FULFILLED.

II. THE GUILTY VERDICT FOR AGGRAVATED BURGLARY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE THE ALLEGED ASSAULT OCCURRED BEFORE THE ELEMENTS OF TRESPASSING WERE FULFILLED.

{¶ 20} Under the foregoing assignments of error, Perry challenges the legal sufficiency and manifest weight of the evidence. Specifically, Perry contends that the evidence does not demonstrate that Perry inflicted physical harm on Crider while he was trespassing on her property. We disagree.

{¶ 21} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "When reviewing a claim as to sufficiency of evidence, the relevant

inquiry is whether any rational factfinder viewing the evidence in a light most favorable to the state could have found the essential elements of the crime proven beyond a reasonable doubt." (Citations omitted.) *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997). "The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact." (Citations omitted.) *Id*.

{¶ 22} In contrast, "[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." (Citation omitted.) *Wilson* at ¶ 12. When evaluating whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). "The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence." *State v. Adams*, 2d Dist. Greene Nos. 2013 CA 61, 2013 CA 62, 2014-Ohio-3432, ¶ 24, citing *Wilson* at ¶ 14.

{¶ 23} "The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve." *State v. Hammad*, 2d Dist. Montgomery No. 26057, 2014-Ohio-3638, ¶ 13, citing *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit

the testimony of particular witnesses. *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997). "This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the factfinder lost its way." (Citation omitted.) *State v. Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510, *4 (Oct. 24, 1997).

{¶ 24} "Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency." (Citation omitted.) *State v. McCrary*, 10th Dist. Franklin No. 10AP-881, 2011-Ohio-3161, ¶ 11. As a result, "a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." (Citations omitted.) *State v. Braxton*, 10th Dist. Franklin No. 04AP-725, 2005-Ohio-2198, ¶ 15.

{¶ 25} As noted above, Perry was convicted of aggravated burglary in violation of R.C. 2911.11(A)(1). Pursuant to that statute:

> 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[.]

(Emphasis added.) R.C. 2911.11(A)(1).

{¶ 26} "A review of this statute reveals that an offender commits aggravated burglary if he (1) by force, (2) trespasses, (3) in an occupied structure, (4) with the purpose to commit any felony, (5) when he inflicts, or attempts or threatens to inflict physical harm on another. The first four of these elements correspond with the requirements for simple burglary. * * * However, the fifth element—inflicting, attempting, or threatening physical harm—elevates burglary to the more serious offense of aggravated burglary." *State v. Clark*, 107 Ohio App.3d 141, 145, 667 N.E.2d 1262 (2d Dist. 1995).

{¶ 27} "Force" is defined as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). "Trespass" is defined in terms of the following: "No person, without privilege to do so, shall * * * [k]nowingly enter *or remain on the land or premises of another* [.]" (Emphasis added.) R.C. 2911.21(A)(1). As for the mens rea element of aggravated burglary, "a defendant may form the purpose to commit a criminal offense at any point during the course of a trespass." *State v. Fontes*, 87 Ohio St.3d 527, 721 N.E.2d 1037 (2000), syllabus. Therefore, the State must show that the offender "invaded the dwelling for the purpose of committing a crime or that he formed that intent during the trespass." *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, ¶ 33, citing *Fontes* at syllabus.

{¶ 28} With respect to the physical harm element, we held in *Clark*, that the element is not satisfied if physical harm is inflicted outside the occupied structure because at that point in time the trespass is no longer taking place and the crime of burglary has

already been completed. *Clark* at 145. Therefore, the physical harm element of aggravated burglary must take place at some point during the trespass. *See State v. Dobbins*, 8th Dist. Cuyahoga No. 84155, 2004-Ohio-5738, ¶ 14 (finding that "[i]n order for the state to prove defendant committed aggravated burglary it had to show that he intended to forcefully trespass into [the victim's] home and, then, that he had the purpose, at some point during that trespass, to inflict, or attempt or threaten to inflict physical harm upon her").

{¶ 29} We note that one who enters a home with permission becomes a trespasser, subject to conviction for aggravated burglary, if he assaults the victim after gaining entry. *State v. Steffen*, 31 Ohio St.3d 111, 114-115, 509 N.E.2d 383 (1987). Accordingly, a trier of fact is "justified in inferring from the evidence that appellant's privilege to remain in [the] home terminated the moment he commenced his assault[.]" *Id.* at 115.

{¶ 30} Upon review of the State's evidence, we find ample testimony to support Perry's conviction for aggravated burglary. Based on the testimony and evidence presented at trial, there was adequate evidence for the jury to find that Perry trespassed by remaining on Crider's property against her wishes through force of violence, and that during the trespass, Perry formed the intent to assault Crider and steal personal items from her, and caused her physical harm in the process.

{¶ 31} In so holding, we note that there was sufficient evidence showing that the physical harm element of the offense occurred while Perry was trespassing in Crider's home. While the jury heard testimony that Perry was initially permitted to be in Crider's home on the night in question, Crider testified that she later told him to leave after they

had an argument while having sex, thus revoking that permission.[1] Crider's testimony indicated that Perry remained in her home despite telling him to leave and that he thereafter assaulted her in the bedroom and also by the front door. Not only did Crider testify that she continued to tell Perry to leave during the incident, but the jury was justified in inferring that he was trespassing upon assaulting Crider. The State also presented testimony from Crider, McClain, Crider's father, and the investigating police officer regarding Crider's injuries, which was corroborated by the photographs admitted into evidence. Accordingly, there was sufficient evidence for the jury to conclude that Perry caused physical harm to Crider while trespassing.

{¶ 32} While Perry testified to a different version of events, namely that he inflicted physical harm on Crider with her consent during rough sex, and that he did not inflict any harm on her after she told him to leave her home, the jury was not obligated to believe his testimony. The decision as to what extent to credit witness testimony "is within the peculiar competence of the factfinder, who has seen and heard the witness." *Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 at *4. Here, Crider testified that her injuries were not a product of consensual rough sex and that she and Perry had not engaged in physical rough sex on the night of the incident. The fact that the jury chose to believe Crider over Perry does not render his conviction against the manifest weight of the evidence and we will not disturb the jury's credibility determination.

{¶ 33} For the foregoing reasons, we conclude that Perry's aggravated burglary conviction was not against the manifest weight of the evidence and was necessarily supported by sufficient evidence. Therefore, Perry's First and Second Assignments of

[1] It is well-established that "a privileged once granted may be revoked." *Steffen*, 31 Ohio St.3d 111 at 115, 509 N.E.2d 383.

Error are overruled.

Third Assignment of Error

{¶ 34} Perry's Third Assignment of Error is as follows:

> THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO INSTRUCT THE JURY ABOUT THE SEQUENTIAL ORDER OF CAUSING PHYSICAL HARM AT THE TIME OF THE TRESPASS AND FAILING TO ANSWER A JURY QUESTION ABOUT THE ELEMENTS OF AGGRAVATED TRESPASS.

{¶ 35} Under this assignment of error, Perry contends the trial court erred in failing to give the jury an instruction stating that the elements of aggravated burglary needed to occur sequentially. Specifically, Perry contends the trial court should have explained that the physical harm element of aggravated burglary must have occurred during the trespass, as held in *Clark*, 107 Ohio App.3d 141, 667 N.E.2d 1262.

{¶ 36} "When reviewing a trial court's jury instructions, an appellate court must determine whether the trial court's refusal to give a requested jury instruction constituted an abuse of discretion under the facts and circumstances of the case." *State v. Callahan*, 2d Dist. Montgomery No. 24595, 2012-Ohio-1092, ¶ 34, citing *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989). (Other citation omitted.) "A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). "It is to be expected that most instances of abuse of discretion will result in decisions that are simply

unreasonable, rather than decisions that are unconscionable or arbitrary." *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). "A decision is unreasonable if there is no sound reasoning process that would support that decision." *Id*.

{¶ 37} In this case, the trial court provided the jury with standard Ohio Jury Instructions for aggravated burglary, and during deliberation, the jury sent a note to the trial court asking whether the elements of aggravated burglary needed to be sequential. Along with the elements of aggravated burglary and their definitions, the jury instructions provided to the jury explained that the purpose to commit a criminal offense element can be formed at any point during the trespass, but did not go into any further detail regarding the sequence of the elements. After discussing the jury's question with counsel, the trial court decided to send back a note to the jury stating that: "The jury instructions contain all of the law needed for your determinations." Court's Exhibit III; Trial Trans., Vol. II (Aug. 6, 2014), p. 318. The trial court gave the following reasoning for its decision:

> [T]he aggravated burglary charge is unique, because it subsumes different crimes within it. And the note—as the note is written, on the aggravated burglary charge, do the elements of the crime need to be sequential. So the answer to that, in part, is no and, in part, is yes. It's no as to the formation of the mens rea for committing the criminal act of assault or theft. But it would be yes insofar as there needs to be the trespass and then the full-fledged subsidiary offenses, right, because you can commit a theft out in the yard, for example, and no trespass into the occupied structure has occurred. So there is an element of sequencing here, but there's also an

> element where it's not sequenced, because of the formation of the mens rea. So that becomes very challenging, I think, to explain to the jury in a concise, understandable, and accurate way. And the better course is to just send it back to them and say you have all of the–we've instructed [sic].

Trial Trans., Vol. II (Aug. 6, 2014), p. 318-319.

{¶ 38} We find the foregoing reasoning of the trial court sound in that the sequence issue is complicated and may have confused the jury, as an instruction generally stating that the elements of aggravated burglary must be sequential would have conveyed an incorrect statement of law. While it is well-established that the physical harm element must have occurred during the course of the trespass, the jury's question to the trial court encompassed more than just that issue and, as explained by the trial court, it required a complex answer that could have caused confusion. Accordingly, we find that the trial court's decision not to give a specific instruction on the sequence issue was not an abuse of discretion, as the jury otherwise had all the standard instructions at its disposal.

{¶ 39} Perry's Third Assignment of Error is overruled.

Conclusion

{¶ 40} Having overruled all three assignments of error raised by Perry, the judgment of the trial court is affirmed.

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DONOVAN, J. and HALL, J., concur.

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