

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	Case No. 24CA4090
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
JAMEY M. ADDINGTON	:	
	:	
	:	RELEASED: 08/04/2026
Defendant-Appellant.	:	

APPEARANCES:

Karyn Justice, Portsmouth, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay S. Willis, Scioto County Assistant Prosecutor, Portsmouth, Ohio for appellee.

Wilkin, J.

{¶1} This is an appeal of a Scioto County Court of Common Pleas judgment entry in which Jamey M. Addington (“Addington”) was convicted of five counts of assault, one count of failing to provide for a functionally impaired person, and one count of patient endangerment. After merging three of the counts, the court sentenced Addington to an aggregate 42-month prison term with post-release control.

{¶2} On appeal, Addington raises two assignments of error, arguing that: (1) her convictions are not supported by the manifest weight of sufficient evidence, and (2) her sentence is contrary to law. After reviewing the parties’ arguments, the record, and the applicable law, we overrule both assignments of error. Therefore, we affirm the trial court’s judgment of conviction.

BACKGROUND

{¶3} On September 6, 2023, a grand jury charged Addington with five counts of assault in violation of R.C. 2903.13(A) and (C)(1), fourth-degree felonies because the offense was alleged to be committed by a caretaker against a person with a functional impairment; five counts of patient abuse in violation of R.C. 2903.34(A)(1) and (C), fourth-degree felonies; one count of failing to provide for a functionally impaired person in violation of R.C. 2903.16(A) and (C)(1), a fourth-degree felony; and one count of patient endangerment in violation of R.C. 2903.341(B) and (E)(3), a third-degree felony. Addington pleaded not guilty to the charges.

{¶4} On June 24, 2024, the court commenced a four-day trial. However, prior to presenting its first witness, the State dismissed Counts 8 through 12 of the indictment. The following evidence was presented.

{¶5} R.G. was 47 years old and disabled due to cerebral palsy. He was non-verbal, had contracted limb muscles, was essentially immobile, required feeding through a G-tube, and considerable care. He could communicate through grunts and smiles. R.G. was at high risk of aspiration (inhaling fluid into his lungs instead of his stomach). Therefore, he should not have been positioned at an angle of less than 45-degrees, except when necessary, and then for no more than one minute. At night, R.G. slept on his side with a body pillow behind him and a pillow between his legs to reduce the risk of aspiration.

{¶6} R.G. was adopted at the age of five. He had four siblings: two sisters, one of whom is deceased, and two brothers, Michael and Daniel Gee

(“Michael” and “Daniel”). R.G.’s family would play with him by lightheartedly patting him with a pool noodle, which he found amusing. Witnesses described R.G. as bubbly, always in a good mood, and “not [having] a mean bone in him.” However, when R.G. is frightened or doesn’t like what’s happening, he becomes “real quiet.”

{¶17} R.G.’s mother initially cared for him. However, as she aged, the family hired aids/nurses from Homecare Network (HN) and other entities to care for R.G. HN employed Addington, who initially assisted in caring for R.G. However, after his mother died on June 17, 2020, R.G. continued to live in the family home by himself, and Addington became his sole caregiver during the day, Monday through Thursday. A different provider cared for R.G. Friday through Sunday.

{¶18} Michael and Daniel would visit R.G. two to three times a week. Michael lived approximately five minutes from the family home where R.G. lived. Daniel resided on the same property as R.G., but in a separate home approximately 30 feet away (door to door). Daniel would monitor R.G. at night using a video camera placed in R.G.’s room. During the day, the camera was turned off unless R.G. had a new care provider. When the camera was on, it was movement-activated and recorded in five-second increments.

{¶19} In the weeks preceding July 2023, R.G. did not have his typical cheerful demeanor. Because he was suspicious of the way R.G. was acting, Daniel turned the camera on during the day.

{¶10} After he got home on Tuesday, July 18, 2023, Daniel noticed “red marks” on R.G.’s right side. Daniel watched the video that was recorded that day from R.G.’s room. He asserted that the camera captured videos between 7:00 a.m. to 4:37 p.m. Daniel testified that R.G. was quiet in all the videos, which is how he acts when he is frightened or uncomfortable. Daniel stated that the family would play with R.G. using pillows, but they never placed them on his face. Daniel testified after July 18, 2023, that R.G. flinches when things are brought near his face.

{¶11} A compilation of video clips recorded at various times on July 18, 2023, depicting Addington’s interactions with R.G. while he was in her care, was admitted into evidence. In most of the videos, R.G. is shown lying flat on his back. In one video, Addington rubs R.G.’s face and then slaps him. In another, a pillow is placed over R.G.’s face as Addington walks past the bed holding an object in her hand. A third clip shows Addington placing a second, larger pillow on top of the pillow already covering R.G.’s face. In a fourth, diapers are stacked on top of both pillows, and Addington can be heard saying, “You think I ever get tired of changing you?” Several other videos show Addington removing the objects from R.G.’s face, repositioning R.G. in his bed, including pulling a pillow out from under his body, and then appearing to slap the pillow into his face. Another shows Addington forcefully pinning down one of R.G.’s arms as she appears to remove a mask from his face. The final video shows Addington tossing a towel over R.G.’s face.

{¶12} Daniel testified that his family never engages in any of these activities with R.G. He did not believe that R.G. enjoyed having these things done to him. Daniel stated that Addington had been playful with R.G. in the past, but in watching these videos, he did not believe that Addington was being playful with R.G.

{¶13} On July 19, 2023, Detective Conkel interviewed Addington. The Detective showed the videos to Addington. Addington acknowledged her actions in the video, but characterized her conduct as being playful with R.G. She also attempted to shift blame for any injury to R.G. to his family or other caretakers. However, she also attributed her actions—hitting R.G. and putting the pillows on his face—to frustration stemming from being overworked and lacking family support. When asked by the detective whether she was at a “breaking point[,]” Addington confirmed “Yes, I really am, and I tried and tried to talk to people before I ever got to this point, because everyone knows I do love my client.” She further maintained that she worked long hours.

{¶14} Addington also tried to minimize her actions by claiming that R.G.’s face was covered only for a second. However, the timestamps on the videos showed that R.G.’s face was covered for approximately five minutes.

{¶15} At the end of the interview, Detective Conkel told Addington she was going to be criminally charged for her actions regarding R.G.

{¶16} Daniel testified that he had no suspicion that Addington was abusing R.G. until he saw the July 18th videos. After Daniel viewed the videos, he sent

them to Michael, and they called the emergency squad and the sheriff. He also provided the videos to law enforcement.

{¶17} The deputy who responded to the call testified that he noticed R.G.'s cheek was red, and he had redness and bruising on his right ribcage. Similarly, the paramedic and emergency medical technician who responded to the call testified that he noticed R.G. had minor cuts, as well as redness on the right side of his face and scratches on his right side by his ribs. However, both also testified that R.G. did not appear to be distressed. They transported R.G. to Southern Ohio Medical Center (SOMC).

{¶18} At SOMC, R.G. was examined by Brenda Damron, a physician's assistant. The court qualified her as an expert in the field of emergency medicine and nursing. Damron testified that she noticed that R.G.'s face was red and there was some bruising under his right arm and on his back. Damron had R.G.'s blood tested and gave him a CT scan. The results from both were normal.

{¶19} She also maintained that it is not medically appropriate to smack someone on the face. She claimed that healthcare workers take an oath to do no harm. She asserted that she reached out to the "social work department" for a psychiatric evaluation of R.G., but because he was non-verbal there was little they could ascertain. Damon opined that pinning down someone by the arms with spasticity and contracture is likely painful. When asked what the risks of stacking things on a patient who has cerebral palsy were, she indicated it could result in asphyxiation, obstruction of the airway, pneumonia, potentially death, as

well as psychological trauma. Finally, she stated that R.G.'s flinching could be PTSD from the incident.

{¶20} Steven Timberlake is an investigator with the Scioto County Prosecutor's Office who investigated Addington's actions. His experience included 25 years with the Portsmouth Police Department, including nine years as a detective. He met R.G. and weighed the items that were stacked on R.G.'s face. The two large pillows were 2.2 pounds each (there were two of those) and the small pillow was 1.4 pounds. The small pillow had a "plastic vinyl" cover. The diapers weighed 0.2 pounds.

{¶21} Vicki Cole testified she had been a Licensed Practical Nurse (LPN) for 23 years and employed by Homecare Network since 2009. Her prior experience included seven years at Golden Years Convalescence Center as an LPN and two years as a home caregiver with SOMC. Prior to July 18, 2023, Cole treated R.G. for a coccyx injury (bedsore) six days a week for about 35-45 minutes a day. Cole testified that family members sometimes playfully tapped his hand with a flyswatter and hit his leg with a pool noodle, which she observed as playful.

{¶22} Cole testified that she was aware that R.G. was at risk for aspiration. She explained that R.G. had undergone surgery to prevent him from throwing up because of his excessive drooling and feeding tube. Therefore, Cole testified that "[R.G.] should always be inclined, unless he - - care was being provided."

{¶23} Cole testified that there would be no reason to cover R.G.'s face for an extended period of time because it would cut off his oxygen flow and he did not have enough strength to clear anything off his face. She also stated that there would be no reason to hit R.G.'s face with your hand or a pillow, or to pin his arm to his bed. Cole confirmed that R.G. barely had enough strength to move his arms and that placing items on his face was not appropriate or playful. When asked if she would have seen or known this was happening, she indicated that she would have immediately intervened to clear his airway, sit him up, and report to superiors and potentially others. She had never seen anyone treat a patient that way in her many years of experience.

{¶24} Cole testified that R.G. was normally a happy person. But after July 18, 2023, she noticed he had become quieter than usual. Although she found that unusual, she did not report it. She learned of the abuse allegations against Addington after the incident, when she was told Addington would not be returning.

{¶25} Cole continued treating R.G. until early April of the following year, during which time his bedsore began clearing up. Cole claimed after Addington's departure, R.G. no longer tolerated playful sheet "peek a boo" over his face and initially was quieter, but after about three to four weeks, his mood improved.

{¶26} Kimberly Porter is a Registered Nurse Case Manager with Homecare Network and has been a registered nurse since 2017. She supervises LPNs and home healthcare aides. Her duties also included direct patient care, including cleaning wounds, administering medication, changing

dressings, administering tube feeding, etc. She creates plans of care for each patient, which outline their needs.

{¶27} Porter had previously treated R.G. for a bedsore on his tailbone for at least a year. Porter visited R.G.'s home four to six days per week and supervised aides to ensure compliance with the care plan, including turning him every two hours and checking his continence.

{¶28} Porter confirmed that R.G. was non-verbal but could smile and grimace. Porter testified that R.G. is a dependent patient. Porter and Addington cared for R.G. together for a period of time.

{¶29} Porter confirmed that due to his cerebral palsy, R.G. had a high risk of aspiration, which meant that instead of swallowing liquid into his stomach, it would enter his lungs and could cause pneumonia, unless he was properly positioned at a 45-degree angle. If he is lying flat, it should be for less than a minute.

{¶30} Porter considered R.G. to be a very happy individual. She said he was always smiling or laughing. Porter stated that she never had to manhandle R.G. She also asserted that "[i]t's never appropriate to hit anyone - - any - - anyone in the face."

{¶31} Porter had never seen or considered appropriate any scenario where multiple pillows or items are piled on a patient's face, and she would report it immediately. She viewed a still image of items on R.G.'s face and stated he lacked arm movement to remove the items himself. She compared his functional ability to that of an infant in terms of removing objects from his face.

{¶32} The State rested and the defense had no witnesses to present. The parties then gave their closing arguments.

{¶33} The State asserted that there was no dispute that Addington was a caretaker and R.G. was a functionally impaired person under Addington's care for the purpose of making the charge against Addington for assault under R.C. 2903.13(C) a fourth-degree felony. The State then broke down the five criminal counts against Addington, respectively: (1) placing the first pillow on R.G.'s face; (2) placing the second bigger pillow, diapers, and bed chux on his face, (3) slapping the pillow in his face, (4) "hitting" R.G. in his face, and (5) pinning R.G. down and pins his arm to the bed, his contracted arm. The State opined that the items were stacked on R.G.'s face for close to five minutes. The State maintains that there was no evidence to support that any of these actions were undertaken in support of caring for R.G.

{¶34} The State claimed that Addington was clearly aware of R.G.'s vulnerability and her actions attempted or did cause R.G. serious physical harm. The State maintained that a mental illness or condition that would require hospitalization or physical injury that carries a substantial risk of death is serious physical harm.

{¶35} The defense's closing focused on Counts 6 and 7. Defense counsel argued that there was simply no evidence that R.G. suffered any serious physical harm. R.G. showed no "manifestations" of such harm.

{¶36} The jury found Addington guilty on Counts 1 through 5 (assault), Count 6 (patient endangerment), and Count 7 (failing to provide for a functionally impaired person).

{¶37} At sentencing, the court found that Counts 1 and 2 (assault) merged with each other. The court further found that Counts 3, 4, and 5 (assault) did not merge. Finally, the court found that Counts 6 and 7 (patient endangerment and failure to provide for a functionally impaired person) merged with each other and with the remaining assault convictions. The State elected to proceed with sentencing on Counts 2, 3, 4, and 5, which were all assault charges. The court imposed a prison term of 18 months on Count 2, and 8 months each on Counts 3, 4, and 5. The court ordered these terms to be served consecutively, for an aggregate prison term of 42 months.

ASSIGNMENTS OF ERROR

- I. MS. ADDINGTON'S CONVICTIONS ARE NOT SUPPORTED BY THE MANIFEST WEIGHT OF SUFFICIENT EVIDENCE.
- II. MS. ADDINGTON'S SENTENCE IS CONTARY TO LAW.

First Assignment of Error

{¶38} Appellant argues her convictions are not supported by the manifest weight of the evidence. She contends the State failed to prove she acted knowingly or that the victim suffered physical harm or serious physical harm. She asserts witnesses observed no injuries, the video does not show injury, and the cause of red marks and flushed cheeks was unexplained.

{¶39} She argues the State's serious-physical-harm theory relied on speculative testimony about potential psychiatric need, which was not

recommended for the victim. She maintains there was no evidence of choking, distress, or risk of death during the incident, and lay speculation was improperly relied upon to reach these conclusions.

{¶40} Therefore, Addington argues that her convictions are against the manifest weight of the evidence.

{¶41} In response, the State maintains that the jury was free to believe, interpret, and analyze the evidence, including which witnesses were credible. The jury chose to place more credibility in the State's evidence than in Addington's self-serving evidence that sought to shift blame to R.G. and his family.

{¶42} The State maintains that a person acts knowingly, regardless of purpose, when a person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. The State argues that Addington, as the caretaker of a developmentally disabled person, was aware of R.G.'s inability to remove anything that would be stacked on his face. She was also aware of the risk of aspiration, asphyxiation, and death if R.G.'s airway was obstructed for a significant period of time. She was aware that pinning his arms would cause him pain because of his contracture. Finally, Addington was aware that slapping a person in the face, who had a history of physical abuse, would cause that person to suffer physical and mental trauma and pain. Thus, the State asserts that Addington knowingly caused R.G. harm while creating a substantial risk of serious physical harm by placing the pillows on his face, by slapping his face, and by pinning his arms.

{¶43} Addington was convicted of patient abuse, which prohibits a person who administers care for a care facility from abusing a patient. She was also convicted of failing to provide for a functionally impaired person. That offense prohibits a caretaker from knowingly failing to provide treatment to a person with a functional impairment that is necessary to maintain the health or safety of that person when that failure results in physical harm or serious physical harm to that person. If the act results in a serious physical injury, the offense is a fourth-degree felony as alleged herein.

{¶44} The State mentions that the evidence showed that R.G. had red marks and bruising on his body. The State maintains that physical harm is any injury regardless of “gravity or duration.” Abuse is defined as knowingly causing physical harm by physical contact. The State asserts that the physician’s assistant testified that based on the trauma from Addington’s actions she would have recommended prolonged psychological treatment if R.G. had been able to communicate and participate. The State claims that Addington inflicted physical and mental trauma on R.G., which caused him serious physical harm

{¶45} The State claims that considering the evidence in a light more favorable to the State, any rational trier of fact would have found this evidence established that all the essential elements of each offense were proven beyond a reasonable doubt. The State maintains that sufficient competent evidence, much of it uncontroverted, exists upon which a jury could find Addington guilty on all counts.

{¶46} Therefore, the State requests that this Court overrule Addington's first assignment of error.

A. Law

1. Standard of Review

{¶47} In conducting a manifest-weight-of-the-evidence review, “an appellate court reviews the entire record, 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.” *State v. Jackson*, 2026-Ohio-1486, ¶ 100, citing *State v. Maynard*, 2012-Ohio-786, ¶ 30 (4th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). “ ‘Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.’ ” *Id.* quoting, *C.E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶48} “[T]he weight and credibility of evidence are issues that the trier of fact must determine.” *State v. West*, 2014-Ohio-1941, ¶ 23, citing *State v. Frazier*, 2007-Ohio-5048, ¶ 106. “A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.” *Id.*, citing *State v. Colquitt*, 2010-Ohio-2210, ¶ 10, fn. 1 (2nd Dist.); *State v. Nichols*, 85 Ohio App.3d 65, 76 (4th Dist.1993). “The underlying rationale for deferring to the trier of fact on issues of evidence weight and credibility is that the trier of fact is best positioned to view the witnesses, to observe their demeanor,

gestures and voice inflections and to use those observations to weigh witness credibility.” *Id.*, citing *Myers v. Garson*, 66 Ohio St.3d 610, 615 (1993); *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984)

{¶49} “ ‘A verdict is not against the manifest weight of the evidence because the finder of fact chose to believe the State's witnesses.’ ” (Brackets in original.) *State v. Wiggers*, 2026-Ohio-1410, ¶ 39 (4th Dist.), quoting *State v. Chancey*, 2015-Ohio-5585, ¶ 36 (4th Dist.), citing *State v. Wilson*, 2014-Ohio-3182, ¶ 24 (9th Dist.), citing *State v. Martinez*, 2013-Ohio-3189, ¶ 16 (9th Dist.). “ ‘ “While the [trier of fact] may take note of inconsistencies and resolve or discount them accordingly, * * * such inconsistencies ‘sic’ do not render defendant's conviction against the manifest weight or sufficiency of the evidence.” ’ ” (Ellipses in original.) *Id.*, quoting *State v. Corson*, 2015-Ohio-5332, ¶ 31 (4th Dist.), quoting *State v. Proby*, 2015-Ohio-3364, ¶ 42 (10th Dist.), citing *State v. Gullick*, 2014-Ohio-1642, ¶ 10 (10th Dist.).

2. Assault

{¶50} The court sentenced Addington for four counts of assault in violation of R.C. 2903.13(A) and (C)(1). R.C. 2903.13 provides:

(A) No person shall *knowingly cause or attempt to cause physical harm* to another . . .

. . .

(C)(1) Whoever violates this section is guilty of assault, and the court shall sentence the offender as provided in this division and divisions (C)(1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) of this section. Except as otherwise provided in division (C)(2) . . .

(2) . . . [I]f the offense is committed by a caretaker against a person with a functional impairment under the caretaker's care, assault is a felony of the fourth degree.

(Emphasis added.)

{¶51} R.C. 2901.22(B) provides that

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

(Emphasis added.)

{¶52} “Physical harm to persons means any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3). Thus, “ ‘[e]ven a minor injury . . . constitutes physical harm for purposes of the domestic violence statute[.]’ ” (Brackets and ellipses in original.) *State v. Hamrick*, 2017-Ohio-323, ¶ 15 (4th Dist.), quoting *Maynard*, 2012-Ohio-786, ¶ 30 (4th Dist.), citing *State v. Marrero*, 2011-Ohio-1390, ¶ 72 (10th Dist.). “Redness and bruising [are] sufficient to demonstrate physical harm for purposes of R.C. 2901.01(A)(3).” *State v. Elkins*, 2024-Ohio-1314, ¶ 28 (12th Dist.), citing *State v. Torman*, 2016-Ohio-748, ¶ 31-32 (3rd Dist.) (physical harm found where defendant grabbed and squeezed the victim’s jaw, resulting in “a slight red mark” and “a little bruising”); *State v. Reese*, 85902, 2005-Ohio-5724, ¶ 12 (8th Dist.) (“Bruising constitutes ‘physical harm’ ”).

B. Analysis

{¶53} Common to all the assault counts is the following evidence.

Addington was a healthcare aide, who was trained to care for disabled persons.

Addington was providing care to R.G. during the events that are the basis for her four assault convictions set out below. She was aware that R.G. was a non-verbal, bedridden, individual with insufficient strength to remove objects from his face. Because certain discrete acts or actions support each count of assault, we address each count individually.

1. Assault

a. Count 2 (The Items on R.G.'s Face)

{¶54} Video clips showed that Addington stacked multiple items weighing several pounds on R.G.'s face. Medical testimony supported that R.G.'s lying prone on his bed and having the items stacked on his face obstructed his airway, which could have resulted in him suffocating because he could not remove those items on his own. Having been trained as a home health aide, Addington was aware that obstructing a person's airway could result in their suffocation. Addington tried to minimize her actions, claiming that R.G.'s face was "covered only for a second[.]" but the timestamps on the videos indicated his face may have been covered for as long as five minutes. There was no evidence to support Addington's actions were medically necessary or otherwise helpful in any way. We find this to be some competent, credible evidence that Addington knowingly attempted to cause R.G. physical harm by causing him to suffocate beyond a reasonable doubt.

b. Counts 3 and 4 (Slapping R.G.'s Face)

{¶55} One video clip shows Addington remove a pillow from under R.G. and then swinging it and contacting R.G.'s face. Another video shows Addington

slapping R.G.'s face with her open palm. R.G.'s face was red or had red marks on it. Several witnesses who were healthcare providers testified that there would be no medical purpose for a caretaker to slap the person they are caring for in the face.

{¶56} Addington suggested that she was “playing” with R.G. She also tried shifting any blame to R.G.'s family or other caretakers. However, she also attributed her actions of hitting R.G. to being frustration-driven from being overworked and not having family support. In one of the videos Addington can be overheard asking R.G.: “You think I ever get tired of changing you?” Clearly, the jury found that Addington was not playing with R.G., but instead was abusing him. We defer to jury on these evidentiary weight and credibility issues because it is in the best position to assess the demeanor, gestures, and voice inflections of the witnesses, and use these observations to weigh their credibility.

{¶57} Therefore, we find the aforementioned to be some competent, credible evidence that Addington knowingly caused R.G. physical harm beyond a reasonable doubt.

c. Count 5 (Pinning R.G.'s Arm)

{¶58} One of the videos shows Addington grab and pin one of R.G.'s arms to the bed and, using her other hand, appears to remove a mask from R.G.'s face. Testimony from a medical professional indicated that it was not appropriate “to forcefully pin [R.G.'s] arm down.” Testimony and documentary evidence also established that R.G. had a bruise on his arm. We find this to be some

competent, credible evidence that Addington knowingly caused physical harm to R.G. beyond a reasonable doubt.

2. Serious Injury

{¶59} Addington argues that the State failed to prove that she caused any serious injury to R.G. However, “serious injury” is only an element of Counts 6 (failing to provide for a functionally impaired person) and 7 (patient endangerment). While the jury found Addington guilty of these offenses, at sentencing, these offenses were merged into one of the assault charges. The State elected for the court to sentence Addington for the assault charge. Consequently, Addington was not sentenced for either Count 6 or 7.

{¶60} “Courts have held, in merged offense cases, where there is sufficient evidence supporting the conviction of the state's elected offense for sentencing, it is harmless error if there was insufficient evidence to support the offenses that merged with the elected offense.” *State v. Henderson*, 2018-Ohio-5123, ¶ 9, (7th Dist.) citing *State v. Worley*, 2016-Ohio-2722, ¶ 23, (8th Dist.) citing *State v. Powell*, 49 Ohio St.3d 255, 263 (1990) (Even if evidence of kidnapping by restraint was insufficient to support conviction, the fact that the kidnapping by removal was based on sufficient evidence and merged with the kidnapping by restraint count means any error with the conviction was harmless beyond a reasonable doubt.); *State v. Croom*, 2013-Ohio-5682, ¶¶ 60-61 (7th Dist.) (“The Supreme Court has concluded that, even if there is insufficient evidence to support one count, where that count has been merged with another count, the error in rendering a verdict on that count is harmless beyond a

reasonable doubt.”), citing *Powell*; *State v. Washington*, 2009–Ohio-6665, ¶ 18 (10th Dist.)(The court is not required to address appellant's sufficiency of the evidence challenge to the kidnapping offenses because the trial court merged those offenses into others.). Because Addington's assault convictions are supported by the manifest weight of the evidence, any error in finding insufficient evidence to support her convictions for failing to provide care for a functionally impaired person and for patient endangerment would be harmless because she was not sentenced on the latter two charges.

3. Conclusion

{¶61} After reviewing the entire record, weighing the evidence and all reasonable inferences, and considering witness credibility and the jury's resolution of conflicting testimony, we conclude the jury did not clearly lose its way or create a manifest miscarriage of justice requiring reversal. Because competent, credible evidence supports each of Addington's four assault convictions, the verdict is not against the manifest weight of the evidence.

Second Assignment of Error

{¶62} In her second assignment of error, Addington asserts that her sentence is contrary to law. However, she argues that the record does not support the court's imposition of consecutive-sentence findings.

{¶63} Addington concedes that the court recited the findings required by R.C. 2929.14(C) for consecutive sentences on the record and in the sentencing entry. However, she argues that the imposition of consecutive sentences is not supported by the record. Addington claims that the record shows that there is

only “a continuous singular act.” Thus, Addington claims that the trial court’s finding that she committed separate criminal acts, thereby permitting imposition of consecutive sentences, is not supported by the record.

{¶64} Addington also complains that the court did not explain why Count 2 warranted a maximum sentence while the other assault counts did not. Addington asserts that she had no criminal record, expressed remorse, and indicated that she intended no harm to R.G.

{¶65} Therefore, Addington contends that the record does not support the trial court’s findings imposing a maximum sentence on Count 2 or ordering consecutive sentences. She therefore requests that this Court vacate her sentences.

{¶66} In response, the State argues that the trial court conducted a proper sentence hearing and weighed all the appropriate factors in considering the principal and purposes of sentencing under R.C. 2929.11. The State claims that Addington failed to show genuine remorse, the injuries suffered by R.G. were exacerbated by his physical and mental condition, and Addington committed these offenses while caring for a developmentally disabled person.

{¶67} The State claims that the court made the required findings to impose consecutive sentences. The court considered Addington’s lack of a criminal record, her position of trust, the vulnerability of R.G., and a statement by Detective Conkel that Addington stopped seeing R.G. as a human being and denied him basic human dignity in imposing the maximum 18-month sentence for Count 2.

{¶68} The State claims that Addington did not show by clear and convincing evidence that the record does not support the sentencing court's findings. Therefore, this court should overrule Addington's second assignment of error.

A. Law

{¶69} "[A]ppellate review of felony sentences employs the standard of review set forth in R.C. 2953.08." *State v. Collins*, 2025-Ohio-1230, ¶ 10 (4th Dist.), citing *State v. Wright*, 2020-Ohio-5195, ¶ 5 (4th Dist.). R.C. 2953.08(G) provides, in pertinent part:

(2) The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court. The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶70} ‘ “Thus, an appellate court may vacate or modify a sentence only if the court concludes, by clear and convincing evidence, either the record does not support the trial court's findings under certain statutes, or the sentence is otherwise contrary to law.” ’ ” *State v. King*, 2020-Ohio-1512, ¶ 8 (4th Dist.), quoting *State v. Pierce*, 2018-Ohio-4458, ¶ 7 (4th Dist.), quoting *State v.*

Marcum, 2016-Ohio-1002, ¶ 23. “ ‘Clear and convincing evidence is that measure or degree of proof . . . which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.’ ” *Marcum* at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. It is critical

“ ‘to understand that the clear and convincing standard used by R.C. 2953.08(G)(2) is written in the negative. It does not say that the trial judge must have clear and convincing evidence to support its findings. Instead, it is the court of appeals that must clearly and convincingly find that the record does not support the court's findings. In other words, the restriction is on the appellate court, not the trial judge. This is an extremely deferential standard of review.’ ”

King at ¶9, quoting *Pierce*, at ¶ 8, quoting *State v. Venes*, 2013-Ohio-1891, ¶ 20-21 (8th Dist.).

{¶71} For felony sentencing, the record must show only that the trial court considered the relevant factors in R.C. 2929.11 and 2929.12. *State v. Kelly*, 2026-Ohio-71, ¶ 24 (4th Dist.). “ ‘Trial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentence.’ ” *State v. Sergeant*, 2016-Ohio-2696, ¶ 34, quoting *State Foster*, 2006-Ohio-856, paragraph seven of the syllabus.

{¶72} “To impose consecutive sentences, a trial court is required to make the R.C. 2929.14(C)(4) findings at the sentencing hearing and incorporate them into the sentencing entry.” *State v. Jensen*, 2026-Ohio-1729, ¶ 22 (4th Dist.), citing *State v. Bonnell*, 2014-Ohio-3177, ¶ 37. “Consecutive-sentence findings include: “[to] protect the public from future crime or to punish the offender and

that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public," and one of the following: [that the offender]

(a) committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, or (b) offenses were committed as part of one or more courses of conduct, or (c) offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)

{¶73} "[A] trial court is not required to state reasons to support its findings, ' "[n]or is it required to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." ' " *Jensen*. at ¶ 22, quoting *State v. Jones*, 2024-Ohio-1083, ¶ 11, quoting *Bonnell* at ¶ 37.

B. Analysis

{¶74} Addington argues that the court's imposition of consecutive sentences in her case is not supported in the record because "[i]t is undisputed that the event leading to this case took place during the same day, over the course of a few minutes and was part of a continuous singular act."

{¶75} Addington appears to be arguing that the record shows that rather than committing four counts of assault, her actions resulted in one count of assault. However, the court found that Addington committed four separate acts of assault. For criminal offenders like Addington who are convicted of multiple counts of the same offense, the allied-offenses-of-similar-import merger analysis under R.C. 2941.25 determines whether that conduct is treated as a single

offense or as multiple offenses for sentencing purposes. See *State v. Delawder*, 2012-Ohio-1923, (the court recognized that if the offenses being reviewed for possible merger are of similar import, but “resulted from separate acts or were performed with a separate animus . . . the offenses will not merge.”).

{¶76} Prior to sentencing Addington, the trial court merged several of Addington’s criminal counts, but found that the assault counts 2,3, 4, and 5 did not merge, effectively determining that each was a discrete act for which she would be sentenced. This determination is consistent with the court’s instructions to the jury, which linked each of Addington’s acts or actions from each video to each criminal count alleged in the indictment.

{¶77} If Addington believed that all her criminal counts were a continuous single act rather than multiple criminal acts, she should have objected when the court conducted its merger analysis prior to sentencing, but she did not do so. Nor did she assign the issue as plain error on appeal. Instead, she attempts to revisit the trial court’s earlier merger determination as a means of undermining the court’s consecutive-sentence findings. Under these circumstances, Addington has waived any challenge to whether her assault convictions stemmed from a single act or separate acts. Accordingly, we reject her contention that the record demonstrates her conduct toward R.G. constituted one continuous, singular act.

{¶78} Further, our review of the record reveals no clear and convincing evidence that the trial court’s consecutive-sentence findings are unsupported by the record. To the contrary, the court acknowledged that Addington had no prior

criminal history, but it also emphasized that she occupied a position of trust working with disabled individuals and caring for someone as particularly vulnerable as R.G. The court further found that Addington committed multiple acts of abuse constituting a course of conduct, and it noted her statement to the investigator that she did not perceive R.G. as a human being. On this record, we conclude that the trial court's consecutive-sentence findings are not clearly and convincingly unsupported by the evidence.

{¶79} Second, Addington complains that the court “ ‘did not explain why [Count 2] warranted a maximum sentence when the other counts did not.’ ” Addington alleges the court's action in this regard is unsupported by the record. With regard to imposing a maximum sentence for Count 2, the trial court indicated that it considered the factors in R.C. 2929.11 and R.C. 2929.12 for felony sentencing. Aside from that obligation, courts are under no onus to make findings or give their reasons for imposing a maximum sentence. *Sergeant* at ¶ 34. Further, Addington cites no legal authority that requires a court to distinguish why it imposed a maximum sentence for one criminal count, but not another.

{¶80} Therefore, we hold that Addington's sentences are not clearly and convincingly unsupported by the record. Accordingly, we overrule Addington's second assignment of error.

CONCLUSION

{¶81} Having overruled both of Addington's assignments of error, we affirm the trial court's judgment of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

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

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.