

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115677
MOHAMAD ALDEMUR,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART,
AND REMANDED
RELEASED AND JOURNALIZED: September 17, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-694938-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Patrick J. Lipaj, Assistant Prosecuting Attorney, *for appellee*.

Jaye M. Schlachet and Eric M. Levy, *for appellant*.

EMANUELLA D. GROVES, P.J.:

{¶ 1} Defendant-appellant Mohamad Aldemur (“Aldemur”) appeals his convictions for strangulation and other charges. He raises the following errors:

Assignment of Error No. 1

The trial court erred and violated [Aldemur's] due process rights by failing to conduct a competency hearing after ordering an evaluation and where the record contains no evidence that a competency report was completed or considered.

Assignment of Error No. 2

The trial court erred in permitting an eight-year-old child, [Daughter], to testify without conducting a voir dire examination or in camera interview to determine her competency to testify as required by Evid.R. 601(A).

Assignment of Error No. 3

The trial court erred to the prejudice of [Aldemur] by permitting the State to use a doll as demonstrative evidence which was highly prejudicial and inflammatory.

Assignment of Error No. 4

[Aldemur] was denied a fair trial and due process due to the State's failure to provide material exculpatory evidence including video of the alleged victim striking [Aldemur] and verification of photographic evidence, in violation of *Brady v. Maryland*.

Assignment of Error No. 5

The trial court erred in failing to merge allied offenses of similar import for purposes of sentencing pursuant to R.C. 2941.25.

Assignment of Error No. 6

The evidence was insufficient to support the convictions as a matter of law.

Assignment of Error No. 7

The convictions were against the manifest weight of the evidence.

Assignment of Error No. 8

The trial court erred in issuing a nunc pro tunc entry imposing full court costs contrary to the oral pronouncement at sentencing waiving half the costs.

Assignment of Error No. 9

The trial court erred when it denied [Aldemur's] motion to represent himself pro se.

{¶ 2} For the reasons that follow, we affirm in part, vacate the sentences for Counts 6, 7, 9, and 10, and remand for resentencing and correction of the sentencing entry.

I. Factual and Procedural History

{¶ 3} In September 2024, a grand jury convened and issued a 12-count indictment against Aldemur. Counts 1 through 5 and 12 listed Aldemur's wife ("Wife") as the alleged victim and charged felonious assault, a felony of the second degree (Count 1); two counts of strangulation as felonies of the third and fourth degree (Counts 2 and 3); and three counts of domestic violence with a prior conviction, two felonies of the fourth degree and one misdemeanor of the second degree (Counts 4, 5, and 12). Counts 6, 7, 9, and 10 listed the couple's daughter ("Daughter") as the victim and included two counts of domestic violence, felonies of the fourth degree with a prior conviction (Counts 6 and 9), and two counts of endangering children, misdemeanors of the first degree (Counts 7 and 10). Counts 8 and 11 involved a family member ("Family Member") and the couple's son ("Son") and charged Aldemur with domestic violence with a prior conviction, a felony of the

fourth degree (Count 8), and endangering children, a misdemeanor of the first degree (Count 11).

{¶ 4} Initially, Aldemur was represented by retained counsel. However, he became dissatisfied with his lawyer's representation and filed a pro se motion to disqualify counsel. Retained counsel subsequently filed a motion to withdraw. At a hearing on the matter, retained counsel alleged that there was "an increasing tendency on [Aldemur's] part to distrust me, to not believe things that I'm telling him." Additionally, retained counsel relayed that he and Aldemur had constant arguments about how to proceed with the case. Counsel also notified the trial court that Aldemur wished to represent himself.

{¶ 5} The trial court addressed Aldemur directly, presented him with a waiver-of-counsel form, and proceeded to review its contents. However, the trial court stopped its colloquy when it appeared that Aldemur was not paying attention. This led the court to question his "mental capacity" for self-representation. The court held the decision in abeyance and ordered an evaluation at the court's psychiatric clinic to determine whether Aldemur was competent to represent himself. Towards the end of the hearing, the trial court noted that Aldemur was making facial expressions and gave a "disrespectful gesture." The trial court advised that this behavior might be taken into consideration when deciding whether to allow Aldemur to represent himself.

{¶ 6} Subsequently, the trial court conducted a pretrial hearing addressing the report from the court's psychiatric clinic. The report stated that they were unable

to complete the evaluation because the clinic refused to allow Aldemur to record the session and Aldemur refused to answer the evaluator's questions. Aldemur claimed that he was willing to cooperate with the evaluation of his competency to represent himself but that he refused to answer the remaining questions, which addressed his competency to stand trial. The court denied Aldemur's request to represent himself noting that it must consider whether self-representation would unnecessarily disrupt the proceedings and that thus far Aldemur had not demonstrated an ability to cooperate with the court's directives. Finally, the trial court granted retained counsel's motion to withdraw and appointed the public defender's office to represent Aldemur.

{¶ 7} At a subsequent pretrial, Aldemur's two public defenders represented that there was no longer a need for a competency evaluation because Aldemur no longer wished to proceed pro se. Thereafter, Aldemur filed two pro se motions: a motion to reinstate his bond, which had been revoked because of GPS violations, and a motion to dismiss the case because his right to a speedy trial had been violated.

{¶ 8} A few months later, Aldemur's public defenders filed a motion to withdraw from the case. Aldemur subsequently filed a pro se motion to disqualify counsel, alleging that counsel had agreed to continuances against his wishes and refused to file motions he requested. At a subsequent hearing on the matter, the public defenders represented that there was a breakdown in communication, Aldemur had "fired" them, and they did not think it was ethical to continue to represent him. The trial court explained to Aldemur that prior to allowing him to

represent himself, the court needed to ensure the decision was made knowingly, voluntarily, and intelligently.

{¶ 9} Aldemur addressed the court and accused the judge of presiding over a civil matter in which he was involved. Aldemur claimed that this presented a conflict of interest. He further alleged that there were discrepancies in the docket and “disappearing” transcripts. He also claimed that he complied with the advice of counsel to appease the court although he disagreed with his counsel’s recommendations. Finally, Aldemur asked the trial court judge to “step down” from the case because of the alleged conflict of interest.

{¶ 10} The court disagreed that it presided over any civil matter involving Aldemur but agreed to check its records. The trial court stated it would require an evaluation by the court’s psychiatric clinic before proceeding further, noting that there were perils to self-representation, that Aldemur continued to “over talk” and interrupt the court, and the court had no faith or confidence that Aldemur was making a voluntary and intelligent decision to waive counsel. Ultimately, the trial court granted the public defenders’ motion to withdraw and appointed new counsel.

{¶ 11} Thereafter, Aldemur’s newly appointed counsel moved to withdraw from the case citing Prof.Cond.R. 1.16(b)(9), a catchall provision, which allows withdrawal if “other good cause” exists. The trial court granted the motion and appointed another lawyer (“trial counsel”) to handle the case, who represented Aldemur throughout the remaining proceedings.

{¶ 12} Later that month, Aldemur appeared with trial counsel. The trial court addressed several pretrial motions, including a new motion filed by Aldemur to represent himself, pro se. Trial counsel alleged that Aldemur still wished to represent himself with trial counsel acting as standby. The court then provided Aldemur with a waiver-of-counsel form and proceeded to review its contents on the record. According to the transcripts, the trial court stopped speaking midsentence and Aldemur's counsel issued an apology. Subsequently, Aldemur apologized and was unable to answer when the trial court asked him to repeat the last thing he heard the trial court say prior to the interruption.

{¶ 13} Aldemur told the trial court that his desire for self-representation was spurred by the belief it would allow him to be released from jail and quicken the proceedings. The trial court noted that its ruling would have no impact on whether Aldemur remained in jail. The trial court called a recess to allow Aldemur to review the waiver of counsel and consider his decision. On returning to the record, the trial court asked Aldemur if he had any questions. Aldemur indicated that he did not have questions, but he would not sign the waiver form because his speedy trial rights had been violated. The trial court denied Aldemur's motion to represent himself.

{¶ 14} The trial was set to commence in September 2025. Prior to calling the jury into the courtroom, the State dismissed Counts 1 and 8, felonious assault of Wife and domestic violence of Family Member. Next, the parties stipulated to the admission of the journal entry of Aldemur's prior conviction for assault against a family member. Finally, trial counsel claimed that the State failed to provide video

evidence of Wife assaulting Aldemur. The State responded that it was not in possession of the original videos; however, they were in Aldemur's possession and he played them for the police officers, which was noted in the police report. Nevertheless, the State had secured copies of the videos that Aldemur had used in a temporary protection order hearing in a separate civil matter and had provided them to the defense. The court found that trial counsel could address any discrepancies between the video and the police report during testimony.

{¶ 15} The trial commenced with the State calling Wife as its first witness. Wife testified that in June 2021, Aldemur was convicted of domestic violence after an incident that occurred between them.

{¶ 16} Wife relayed three additional incidents that occurred in their home in Cleveland. Between December 8, 2023, and December 10, 2023, she was sleeping on the couch with Son when Aldemur began yelling and threw a smoking cigarette on her. When she stood up, carrying Son, Aldemur “hit [her] with his head,” causing a nosebleed. Wife testified that she grabbed the car keys and drove to Aldemur's parents' house. During her testimony, the State sought to use a “doll” to allow Wife to demonstrate how Aldemur hit her.¹ The trial court allowed the demonstrative evidence over the defense's objection. After the demonstration, the State referred to Aldemur's actions as a “headbutt.” Wife and Aldemur later exchanged text messages, which were mostly in Arabic. Wife testified that in the messages, Aldemur

¹ During testimony, the props were universally referred to as “dolls.” Later, the trial court described the “dolls” as a “Barbie sized” doll and a life-size mannequin, that emulated the top of the shoulders upwards.

initially denied everything. Wife replied that he hit her in the head. Per Wife, Aldemur then admitted that he hit her and told her to call the police. The last line of the text exchange is a message from Aldemur in English that said, “fucking snitch.”

{¶ 17} The second incident occurred on December 16, 2023, during and after a party at Aldemur’s parents’ home. Wife relayed that Aldemur became angry and accused Wife of hitting Son during the party. Wife testified that Son was playing with one of his cousins when the cousin accidentally hit Son in the mouth. Wife called her sister-in-law who confirmed Wife’s version of events. Aldemur then began blaming Daughter, told her she was not a good sister, and threw his shoes at her. Daughter began crying and went to her room. Wife followed Daughter and tried to calm her down. Aldemur then came to Daughter’s room to get Wife. When Wife refused, Aldemur grabbed her hand and Daughter began crying and yelling. Aldemur responded by slapping Daughter’s face. Wife then tried to run out of the front door but Aldemur grabbed her and pulled her by her hair.

{¶ 18} Wife asked if she could demonstrate what happened using the doll. The defense objected, and the trial court overruled the objection. Using the doll to demonstrate, Wife testified that Aldemur pulled her hair and brought her down to the floor. Wife’s back was on the floor, her neck was on the coffee table, “and he grabbed my hand to our room.” Wife testified that Aldemur grabbed her forcefully and she had bruises for two weeks. The State introduced pictures of Wife’s arm that

she took approximately four days after the incident. The pictures displayed yellow and black bruising on the inside of her wrist to mid forearm.

{¶ 19} Wife then alleged that Aldemur tried to rape her the morning after the party. He put her on their bed, tried to take off her clothes, and hit her back with his elbow. She tried to move and open a nearby window to call for help, but Aldemur pulled her back and began to “choke” her. She testified that he used both hands and applied a lot of pressure to her neck. Wife began yelling and screaming. Aldemur placed a pillow and blanket over her head and sat on top of her. She could not see anything, everything went black, and she could not breathe or move because he had all of his weight on her. Wife testified that Daughter began yelling and screaming, causing Aldemur to get up and tell Daughter to stop. Around the same time, Aldemur’s sister arrived at their home because Daughter called Aldemur’s sister during the incident. Wife testified that she wanted to leave the house with her sister-in-law, but Aldemur forbade it. Aldemur then became angry again, pulled Wife’s hand, started to kick her in her back, and “kicked” her, Daughter, and his sister out of the house. Wife testified that she sustained a scratch on her neck and visible redness during the incident. Wife was permitted to demonstrate the assault with a “doll.”

{¶ 20} Afterwards, Wife explained that Aldemur’s father arranged for Wife and the children to fly to Jordan right before Christmas.

{¶ 21} While in Jordan, Wife had surgery on her nose because she could not breathe, and it was “big, swollen, and bloody.” While still recovering from the

surgery, she participated in a video conference with staff from Cuyahoga Community College (“Tri-C”) where she was taking classes and told them what happened to her. Wife remained in Jordan until May 2024. Wife elected to come back to the U.S. because Aldemur told her family that he wanted a last chance to make things work. When Wife and the children returned to the U.S., her mother came with her.

{¶ 22} The final incident occurred in June 2024. Wife testified that Aldemur became angry when Wife was driving an untitled vehicle, got caught in traffic, and was unable to immediately follow behind him on the way to their home. Aldemur claimed that she had deliberately lost him because she wanted him to go to jail. The couple then began arguing about whether Aldemur could take the children out to eat without Wife. Aldemur refused to allow Wife to come, and Wife refused to allow the children to go without her. Wife claimed that Aldemur had taken their passports and threatened to take the children from Wife and leave the country.

{¶ 23} Wife stated Aldemur yelled, threatened to kill her, pushed her hand, and held her nose when she refused to allow the children to accompany him. Wife believed the threat because Aldemur had pointed a gun at her head many times. Additionally, the day she came back to the U.S. he told her he would kill her the same way an Arabic man in the news had done. When Aldemur began to make threats, Daughter went to get Wife’s mother. Wife testified that when Daughter returned with her mother, her mother began talking to Aldemur and he responded by stating, “I will kill your daughter. I will kill your brother. I will make you cry in your entire

life.” Wife took her phone, left the house, and called the police. Wife later learned that after she left the house, Aldemur pushed her mother and hit Daughter. She observed a bruise on her mother’s chest and a bruise on Daughter’s leg. She took pictures of Daughter’s leg the next day.

{¶ 24} Near the end of Wife’s testimony, Aldemur made an outburst claiming that Wife’s mother harmed Son and the incident was “on camera.” The trial court urged the State to continue, but the State had no further questions. Trial counsel apologized on behalf of Aldemur.

{¶ 25} On cross-examination, trial counsel explored potential bias asking whether Wife’s testimony was motivated by anger that Aldemur had a girlfriend. Wife responded that this was not his first girlfriend and that she did not like it. Wife also agreed that some aspects of her testimony did not appear in the police report, like her allegation of rape.

{¶ 26} After Wife concluded her testimony, the trial court allowed the defense to make a record of its objection to the use of dolls to demonstrate the alleged assaults. The defense argued that Wife spoke decent English and the dolls were an overdramatization of the events. The State countered that English was not Wife’s first language and using the dolls clarified what happened. The trial court described the “dolls” for the record and again noted that the defense objection was overruled.

{¶ 27} After a recess and during an on-the-record discussion with counsel prior to Aldemur entering the courtroom, the trial court noted that Aldemur was

doodling rather than taking notes, had an outburst “or two,” and appeared to be more animated and argumentative with his lawyer. The court pointed out that these actions raised a safety concern, and the court took certain precautions in response. Trial counsel noted that Aldemur “seemed okay” in comparison to a prior incident where Aldemur was “dragged” out of the courtroom, but agreed that Aldemur was “very argumentative” with him and that Aldemur had an outburst with him during the recess.

{¶ 28} Next, the State called Cleveland Police Officers Ashley Robinson (“Officer Robinson”) and William McConnell (“Officer McConnell”). They responded to Wife’s 9-1-1 call on June 13, 2024. Per department policy, they kept the parties separated, and Officer Robinson spoke to Wife while Officer McConnell spoke to Aldemur. Officer Robinson testified that Wife was upset and “not really angry” but seemed like she was “going to cry.” On cross-examination, Officer Robinson agreed that the police report for the incident did not mention a rape. Officer McConnell testified that they were unable to determine the primary aggressor in the incident because both parties alleged physical violence and threats against the other. Officer McConnell stated that Aldemur showed him a video that Officer McConnell initially believed was Wife assaulting Aldemur. On redirect, the State showed Officer McConnell a video of the alleged incident. Officer McConnell identified the woman in the video as Wife’s mother and identified the video as the one Aldemur played for him at the crime scene. He also testified that only one of the videos Aldemur showed him was of an assault.

{¶ 29} Two employees from Tri-C testified that they interacted with Wife numerous times during her enrollment at the college. They both testified regarding an online meeting with Wife in January 2024, which was held to assist her to enroll in classes when she came back to the U.S. Both noticed that she had bandages on her nose during the call. Each witness had little to no contact with Aldemur and the only information they had about Aldemur and Wife’s relationship came from their discussions with Wife.

{¶ 30} Daughter also testified. However, the trial court did not conduct a voir dire examination of the child before allowing her to testify. Daughter was sworn in, and the defense did not object to her testimony.

{¶ 31} The State asked Daughter to recite her parents’ names. Daughter testified that she did not know how to say her father’s name in English. Aldemur then burst out, “Brain washed, brain washed.” The trial court admonished him to stop and informed him that if there were any more outbursts, the trial court would find that Aldemur voluntarily absented himself from the proceedings and would have him removed.

{¶ 32} When she resumed testifying, Daughter could remember talking to the police but not the subject of their conversation. She did however remember a time when her mother was screaming. She, her brother, and cousin were playing at a family member’s house when the cousin bumped into her brother. After they got home, Daughter heard Wife screaming. She saw Aldemur “dragging” Wife to the bedroom and saw Aldemur put a pillow on Wife’s head and cover her with a blanket.

She knew Wife was in danger when she stopped hearing Wife scream. Daughter then yelled at Aldemur who slapped her in the face. Afterward, Daughter called Aldemur's sister, who came over and got them away from the house.

{¶ 33} Daughter also recalled how her leg became bruised. Aldemur asked Daughter for Wife's phone. He repeatedly asked Daughter to tell him the passcode, and she repeatedly told him that she did not know the passcode. In response, he hit her on the leg and she felt "sharp" pains.

{¶ 34} Cleveland Police Detective Sam Ortiz ("Det. Ortiz") was assigned to the case after the June 13, 2024 incident. He reviewed body-camera footage and could hear the audio from the video Aldemur played for the on-scene officers, which depicted the alleged assault between Aldemur and Wife's mother. He eventually watched the video and identified the person in the video as Wife's mother, not Wife. On cross-examination, Det. Ortiz acknowledged that Wife did not call the police after the alleged incidents in December 2023.

{¶ 35} The State rested subject to the admission of exhibits. The defense objected to admission of some of the State's exhibits claiming they were duplicative but did not challenge the authenticity of any pictures. The defense moved for acquittal pursuant to Crim.R. 29, as to all counts. The trial court granted the motion with respect to Count 11, endangering children involving Son, and denied the motion for the remaining charges.

{¶ 36} Aldemur elected to testify on his own behalf. Aldemur testified that the December 2023 incidents did not occur. Wife wanted to go back to Jordan but

he opposed it. He alleged that Wife abducted the children and went to Jordan, anyway. He begged her to come back, which she did in May 2024. When they returned, Aldemur alleged that he planned to take the whole family to Disneyland, which is why he took everyone's passports. Throughout his testimony, Aldemur alleged that Wife and her mother were plotting to put him in jail. He claimed that Wife had done it before, stating that "whenever she doesn't like something that I don't do, she goes to the police and puts me in jail." He also mentioned that he had several recordings to support his testimony; however, none were introduced. Aldemur testified that the first time Wife called the police, he was planning a trip to Florida with his friends. Wife was pregnant with Son at the time; therefore, she could not go and did not want Aldemur to go. Aldemur went on the trip anyway without telling Wife that he was leaving.

{¶ 37} Aldemur later clarified that there was one altercation between him and Wife in December 2023. He claimed to have called the police because Wife tried to attack him with a knife and broke his car window in front of 13 witnesses. He also relayed an incident where Wife allegedly punched Son in the mouth and alleged that the incident was captured on cameras at his brother's house. When asked to explain the photos of Wife's injuries, Aldemur claimed that they were old pictures related to the 2021 case.

{¶ 38} Regarding the June 2024 incident, Aldemur agreed that he had told Daughter he wanted to take them to a restaurant. However, he alleged the argument occurred because Wife wanted their passports back, but he refused to give them to

her because he had not seen his children in two years. After his refusal, Aldemur alleged that both Wife and her mother began to attack him. They smacked him and spat on him and told him they were going to put him in jail like they had two years prior. Ultimately, Aldemur denied ever assaulting Wife or Daughter.

{¶ 39} On cross-examination, Aldemur admitted that he accepted a plea deal for assaulting Wife in 2021, but claimed that he “admitted it just to get it over with.” When asked about the video the State introduced from June 2024, Aldemur claimed that it was not the same video that he originally showed to police. To explain the inconsistencies between his testimony and Officer McConnell’s testimony, Aldemur claimed that the officer was not lying when he testified he only saw one assault video, but rather Officer McConnell did not remember the video displaying Wife assaulting him.

{¶ 40} After the conclusion of Aldemur’s testimony, the defense rested its case and renewed its Crim.R. 29 motion. The trial court denied the motion.

{¶ 41} The jury found Aldemur guilty on all remaining charges. Prior to sentencing, the defense made an oral motion for the court to merge charges involving the same victim for the same incident. The trial court did not rule on the motion and did not merge the offenses. The trial court sentenced Aldemur as follows: 30 months on Count 2, strangulation; 17 months on Count 3, strangulation; 17 months on Count 4, domestic violence; 17 months on Count 5, domestic violence; 17 months on Count 6, domestic violence; 30 days on Count 7, endangering children; 17 months on Count 9, domestic violence; 30 days on Count 10, endangering

children; and 30 days on Count 12, domestic violence. The court ran Counts 2 through 5 concurrently with one another, and Counts 6, 7, 9, 10, and 12 were also run concurrently with one another, but consecutively to Counts 2 through 5. The trial court imposed an aggregate sentence of 47 months in prison.

{¶ 42} The defense requested that the court waive all fines and costs. The trial court agreed to waive all “fines and fees” but required Aldemur to pay “one half” of the court costs.

{¶ 43} In its October 8, 2025 sentencing entry, the court waived the fines, required Aldemur to pay “only half of costs and fees,” and entered judgment against Aldemur “in an amount equal to the costs of this prosecution.” Aldemur filed a notice of appeal. Subsequently, the trial court filed a nunc pro tunc entry, which corrected an omission in the appearances. Aldemur filed a second notice of appeal after that entry.

II. Law and Analysis

{¶ 44} For ease of analysis, we will address the assignments of error out of order and/or in combination.

A. Competency and the Right to Waive Counsel

{¶ 45} In his first and ninth assignments of error, Aldemur challenges the trial court’s decision denying his right to self-representation and failing to hold a hearing on his competency to stand trial. Because there are aspects of these claims that overlap, we will consider them together. In the instant case, both Aldemur’s

competence to stand trial and his competence to waive counsel were addressed by the trial court.

{¶ 46} Incompetency is a defendant’s “inability to understand ‘the nature and objective of the proceedings against him [or her] or of presently assisting in his [or her] defense.’” *State v. Lynch*, 2025-Ohio-2769, ¶ 28 (8th Dist.), quoting R.C. 2945.37(A) and citing *State v. Bock*, 28 Ohio St.3d 108, 110 (1986). There is a rebuttable presumption that a criminal defendant is competent to stand trial. *Id.* citing *State v. Barton*, 2006-Ohio-1324, ¶ 56. The trial court, the prosecution, or the defense may raise the defendant’s competency at any time. R.C. 2945.37(B).

{¶ 47} Moreover, when a defendant whose competency is questioned requests to waive counsel, the trial court must determine whether the defendant is competent to waive the right to counsel. *State v. Cedeno*, 2015-Ohio-5412, ¶ 24 (8th Dist.), citing *State v. Watson*, 132 Ohio App.3d 57, 63 (8th Dist. 1998), citing *Godinez v. Moran*, 509 U.S. 389, 400-402 (1993). “[T]he competence that is required of a defendant seeking to waive his [or her] right to counsel is the competence to waive the right, not the competence to represent himself [or herself].” *Godinez* at 399. Competence to waive the right to counsel requires similar considerations necessary for competence to stand trial. *State v. Jordan*, 2004-Ohio-783, ¶ 27. Thus, the court must determine “whether a defendant has ‘sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding’ and has a ‘rational as well as factual understanding of the proceedings against him [or her].’” *Id.*, quoting *Dusky v. United States*, 362 U.S.

402 (1960). If deemed competent, a defendant may waive the right to counsel if the waiver is knowing, voluntary, and intelligent. *State v. Degenero*, 2016-Ohio-8514, ¶ 13 (11th Dist.), citing *State v. Gibson*, 45 Ohio St.2d 366, 377-378 (1976).

{¶ 48} Here, the trial court requested a competency evaluation twice in response to Aldemur’s request to waive his right to counsel. However, the court did not hold a hearing on the issue. Accordingly, we begin with an evaluation of the trial court’s failure to hold a competency hearing for Aldemur’s competence to stand trial.

{¶ 49} Preliminary, we note that the trial court’s failure to conduct a hearing was error. R.C. 2945.37(B) provides that “[i]n in a criminal action in a court of common pleas, a county court, or a municipal court, the court, prosecutor, or defense may raise the issue of the defendant’s competence to stand trial.” When the issue is raised before trial, “the court shall hold a hearing on the issue as provided in this section.” *Id.* The General Assembly’s use of “shall” imposes a mandatory duty. Thus, the relevant threshold question is whether Aldemur’s competency to stand trial was raised before trial.

{¶ 50} Aldemur’s mental capacity was questioned by the trial court when addressing his request to represent himself. The court stopped its waiver-of-counsel colloquy and ordered an evaluation through the court psychiatric clinic. Aldemur’s competency was not determined because the evaluation was not completed. According to the trial record, the clinic refused to permit Aldemur to record the evaluation, and Aldemur refused to answer certain questions, including questions concerning his competency to stand trial. Later, when Aldemur again sought to

represent himself the trial court stated that it would require another psychiatric evaluation before proceeding.

{¶ 51} Consequently, once competency to stand trial was raised, R.C. 2945.37(B) required a hearing despite defense counsel's subsequent representation that a competency evaluation was no longer necessary. Competency to stand trial and the right to waive counsel are related but distinct trial court inquiries. Defendants are competent to stand trial when they possess sufficient present ability to consult with counsel with a reasonable degree of rational understanding and possess a rational and factual understanding of the proceedings against them. *State v. Jordan*, 2004-Ohio-783, ¶ 27, citing *Dusky v. United States*, 362 U.S. 402 (1960). By contrast, once a competent defendant seeks to waive counsel, the court must separately determine whether that waiver is knowing, intelligent, and voluntary. *See Godinez v. Moran*, 509 U.S. 389, 399-400 (1993). The withdrawal of Aldemur's request for self-representation did not eliminate the competency-to-stand-trial issue that was raised by the trial court.

{¶ 52} Nevertheless, a trial court's failure to hold a competency hearing is harmless error unless the reviewing court finds sufficient indicia of incompetency in the trial record. *Bock*, 28 Ohio St.3d at 111. This court must consider evidence of both the defendant's competence and incompetence to determine whether the failure to hold a hearing was harmless error. *State v. Mills*, 2023-Ohio-4716, ¶ 21.

{¶ 53} While Aldemur was clearly disruptive and transitioned through several attorneys, none of those attorneys raised any alleged incompetence to stand

trial. Rather, they alleged that Aldemur distrusted them and disagreed with their trial strategy and decisions made on his behalf. Aldemur also alleged that he followed the advice of counsel even when he disagreed with that advice because his lawyers told him it would appease the trial court. This suggests that Aldemur was capable of receiving the advice of counsel and making a rational decision to follow it even when he disagreed with that advice.

{¶ 54} Notably, Aldemur's conduct at trial was not indicative of incompetence. While Aldemur disrupted the trial more than once, his outbursts were directed towards specific testimony, suggesting that Daughter was brainwashed or that Wife or her mother had assaulted Son. Additionally, when the trial court warned Aldemur that he would be removed from the courtroom if there were any more disruptions, the outbursts ceased.

{¶ 55} Moreover, Aldemur points to his claims that the trial judge presided over a civil case as indicia of incompetence. Aldemur alleged that the trial judge signed something in his civil case. The trial court did not deny any involvement in such a case but indicated it was unaware of any involvement and would investigate the claim. This issue was never revisited on the record. Finally, Aldemur referred to one set of lawyers as "public pretenders" who were "more of the prosecutor's lawyers than they are mine or your lawyers." Aldemur argues that these statements were signs of his inability to understand the roles of the lawyers. We disagree. When viewed in context, these statements explained Aldemur's dissatisfaction with his lawyers, not confusion regarding their specific roles.

{¶ 56} Since our review of the record reveals that there are indicia of Aldemur’s competence and no indicia of incompetency to stand trial, the trial court’s failure to hold a hearing was harmless error. Accordingly, the first assignment of error is overruled.

{¶ 57} Now, we turn to the question of whether Aldemur’s decision to waive his right to counsel was made voluntarily, knowingly, and intelligently.

{¶ 58} The right to self-representation is guaranteed by the Sixth Amendment of the United States Constitution. *State v. Orr*, 2014-Ohio-4814, ¶ 7 (8th Dist.), citing *Gibson*, 45 Ohio St.2d 366, at paragraph one of the syllabus, citing *Faretta v. California*, 422 U.S. 806 (1975); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942) (the Sixth Amendment right to assistance of counsel includes a “correlative right to dispense with a lawyer’s help”). “If a trial court denies the right to self-representation, when properly invoked, the denial is per se reversible error.” *State v. Marshall*, 2010-Ohio-1958, ¶ 17 (4th Dist.), quoting *State v. Cassano*, 2002-Ohio-3751, ¶ 32; *State v. Parks*, 2026-Ohio-1253, ¶ 18 (4th Dist.) (“If a trial court denies the right of self-representation, when properly invoked, such error constitutes a structural error, which is per se reversible.”).

{¶ 59} Although an important hallmark of the criminal justice system, “[t]he right of self-representation is not absolute.” *Orr* at ¶ 8, citing *Indiana v. Edwards*, 554 U.S. 164, 171 (2008). Trial courts must “indulge in every reasonable presumption against the waiver of a fundamental constitutional right such as the

right to be represented by counsel.” *Id.*, citing *State v. Dyer*, 117 Ohio App.3d 92, 95 (2d Dist. 1996).

{¶ 60} We review the trial court’s pretrial decision regarding a timely waiver of the right to counsel de novo. *State v. Newman*, 2020-Ohio-5087, ¶ 17 (8th Dist.); *Parks* at ¶ 22 (“Generally, appellate courts conduct a de novo review of a trial court’s denial of a request for self-representation asserted prior to the commencement of trial, whereas the request made after trial commences is reviewed for an abuse of discretion.”).

{¶ 61} A defendant’s assertion of the right to self-representation must be timely, clear, and unequivocal. *State v. Thomas*, 2024-Ohio-3387, ¶ 30 (5th Dist.); *State v. Townsend*, 2019-Ohio-1134, ¶ 19 (8th Dist.), citing *Cassano* at ¶ 38. Further guidance is provided in the Ohio Criminal Rules. Crim.R. 44(A) provides:

Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant at every stage of the proceedings from their initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of their right to assigned counsel, knowingly, intelligently, and voluntarily waives their right to counsel.

{¶ 62} When addressing the defendant, a trial court must demonstrate substantial compliance with Crim.R. 44(A) by engaging in sufficient inquiry with the defendant to determine whether the defendant fully understands and is intelligently relinquishing his right to counsel. *State v. West*, 2017-Ohio-7521, ¶ 47 (2d Dist.).

{¶ 63} The “judge must investigate as long and as thoroughly as the circumstances of the case before him demand.” *West* at *id.*, quoting *Von Moltke v.*

Gillies, 332 U.S. 708, 723-724 (1948). The court’s responsibility to investigate does not end when a defendant claims he or she is informed of the right to counsel and that he or she wishes to waive that right. *Parks*, 2026-Ohio-1253 at ¶ 20, citing *State v. Mootispaw*, 2010-Ohio-4772, ¶ 19. Rather,

“[t]o be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.”

(Cleaned up.) *Id.*, quoting *Mootispaw* at *id.*; *State v. Martin*, 2004-Ohio-5471, ¶ 40.

{¶ 64} The Ohio Supreme Court has further stated that courts may consider the accused’s conduct. An intelligent waiver of the right to counsel depends on the particular facts and circumstances surrounding the case, “including the background, experience, and conduct of the accused.” *State v. Hundley*, 2020-Ohio-3775, ¶ 97, quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Additionally, the trial court’s power “to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court’s business” factors into the self-representation determination. *Parks*, 2026-Ohio-1253, at ¶ 26 (4th Dist.), quoting *State v. Dumas*, 2015-Ohio-2683, ¶ 20 (7th Dist.), citing *State v. Clifford*, 162 Ohio St.3d 370, 372 (1954). In *Parks*, after a thorough colloquy, the trial court allowed the defendant to represent himself. However, after *Parks* “completely lost his composure” when the court ruled against him at a suppression hearing, spouting a “tirade of vitriol and expletives directed at the court,” the trial court refused to allow *Parks* to represent himself going forward. The court of appeals upheld the trial

court's ruling recognizing that a "trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Id.* at ¶ 24, 27-28, quoting *Faretta* 422 U.S. at 834, fn. 46 (1975); *State v. Phillips*, 2019-Ohio-2930, ¶ 19 (10th Dist.).

{¶ 65} With this framework in mind, we examine the facts of this case. The first time Aldemur expressed a desire to represent himself was at a pretrial hearing. He was dissatisfied with the representation of his retained counsel and asked to represent himself. The trial court attempted to engage Aldemur in a colloquy but stopped when it appeared that Aldemur was not paying attention. The court then ordered a psychiatric evaluation to determine Aldemur's competence to waive the right to counsel. However, Aldemur did not cooperate with the evaluation because he was not allowed to record the session. Furthermore, Aldemur refused to answer questions regarding his competency to waive counsel or his competency to stand trial. The trial court denied the request and appointed new counsel for Aldemur.

{¶ 66} Aldemur subsequently cycled through three more lawyers who asked to be withdrawn from the case. With his fifth and final lawyer, Aldemur expressed a desire to represent himself and was amenable to his trial counsel sitting as standby counsel. However, Aldemur also admitted that his main reason for wanting to represent himself was a belief that he would be released from jail and the case would proceed faster. The record reflects that the trial court attempted to review the pitfalls and perils of self-representation multiple times, but Aldemur was often distracted, did not appear fully engaged, and was unable to respond when asked

questions about the trial court’s colloquy. While arguably Aldemur was voluntarily relinquishing his right to counsel, the record did not reflect that Aldemur acted with knowledge of the perils of self-representation or an intelligent understanding of his responsibilities if his request was granted.²

{¶ 67} Consequently, we find that the trial court’s decision to require Aldemur to be represented by counsel was supported by the record because Aldemur did not knowingly and intelligently waive his right to counsel.

{¶ 68} Accordingly, the ninth assignment of error is overruled.

B. Alleged *Brady v. Maryland* Violations

{¶ 69} In the fourth assignment of error, Aldemur argues that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), when it suppressed video evidence depicting Wife as the primary aggressor and introduced false evidence of injuries that were not from the incidents in question. Aldemur claims that this conduct violated his right to due process under the Fourteenth Amendment of the United States Constitution. These arguments are not well taken.

{¶ 70} “A *Brady* violation occurs when the [S]tate ‘withholds evidence that is favorable to the defendant and material to the defendant’s guilt or punishment.’” (Cleaned up). *State v. McCarthan*, 2024-Ohio-4751, ¶ 62 (5th Dist.). To prove the *Brady* violation, the defendant must demonstrate “(1) that the prosecutor failed to disclose evidence; (2) that the evidence was favorable to the defense, and (3) the

² We decline to address the State’s suggestion that the trial court’s decision was valid because Aldemur was an “obstructionist” and the court was permitted to deny Aldemur’s right to represent himself to preserve the regularity of the proceedings.

evidence was material.” *Id.*, citing *State v. Vale*, 2023-Ohio-4287, ¶ 27 (10th Dist.). The burden of proof to establish a *Brady* violation rests with the accused. *McCarthan at id.*, citing *Vale at id.* Furthermore, “unless the omission deprived the defendant of a fair trial, there [is] no constitutional violation requiring that the verdict be set aside. . . .” *State v. Widmer*, 2013-Ohio-62, ¶ 32 (12th Dist.), quoting *United States v. Presser*, 844 F.2d 1275, 1281 (6th Cir. 1988).

{¶ 71} With respect to Aldemur’s first claim, that the State suppressed video evidence, we note that *Brady* only applies to evidence possessed by the prosecutor or by someone over whom the prosecutor has control. *State v. Armstrong*, 2025-Ohio-2609, ¶ 26 (2d Dist.). While the prosecution has a duty to discover any favorable evidence known to others acting on the government’s behalf, “[m]aterials not possessed by the government cannot be suppressed within the meaning of *Brady*.” (Cleaned up). *Id.*

{¶ 72} In the instant case, the defense did not present any evidence that the exculpatory videos Aldemur claimed existed were in the possession of the State. In fact, the record reflects that Aldemur showed the videos to Officer McConnell, not that he gave them to Officer McConnell. Nevertheless, the State did its due diligence and obtained videos from a civil proceeding and produced them to the defense. Although Aldemur claims that there were other videos, he failed to establish that the videos were possessed by the State and, therefore, failed to establish that the State suppressed the evidence.

{¶ 73} Next, we turn to Aldemur’s second claim, that the State introduced false evidence of Wife’s injuries and that Wife offered false testimony. When the reliability of a given witness may be determinative of guilt or innocence, nondisclosure of evidence affecting the credibility of that witness falls within the general rule under *Brady* that suppression of material evidence justifies a new trial regardless of the good or bad faith of the prosecution. *Giglio v. United States*, 405 U.S. 150, 153 (1972). To establish a claim, the defendant must establish that (1) the testimony was actually false, (2) the testimony was material, and (3) the prosecution knew it was false. *Widmer*, 2013-Ohio-62 at ¶ 38 (12th Dist.). The defense must show that “the testimony was actually perjured, and mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony.” *Widmer* at *id.*, citing *Coe v. Bell*, 161 F.3d 320, 343 (6th Cir. 1998).

{¶ 74} Again, Aldemur has the burden of proving that Wife testified falsely when she identified the pictures introduced at trial and stated they were from the recent incidents and not from the 2021 case. Other than Aldemur’s self-serving testimony that the pictures came from the 2021 assault case, he presented no evidence to support his contention that Wife lied and that the pictures were from the earlier case. Thus, Aldemur has failed to establish that the pictures were from 2021 and not 2023. Moreover, even if the pictures were from the earlier incident, Aldemur did not present any evidence to establish that the State introduced the testimony knowing that it was false. Nor does anything in the record before us suggest that the testimony was actually perjured.

{¶ 75} Accordingly, the fourth assignment of error is overruled.

C. Daughter's Competence to Testify

{¶ 76} In the second assignment of error, Aldemur argues that the trial court committed plain error when it permitted Daughter to testify without first conducting either a voir dire examination or in camera interview to determine her competency to testify pursuant to Evid.R. 601(A). We disagree.

{¶ 77} Because Aldemur did not object to Daughter's testimony, he must establish that the trial court plainly erred. In order to demonstrate plain error, Aldemur must show (1) an error, i.e., a deviation from a legal rule, (2) which is plain or obvious, and (3) which effects a substantial right. *State v. Bright*, 2024-Ohio-2803, ¶ 17 (8th Dist.), citing *State v. Pratts*, 2016-Ohio-8053, ¶ 34 (8th Dist.), citing *State v. Barnes*, 2002-Ohio-68. The defendant is "required to demonstrate a reasonable probability that the error resulted in prejudice — the same deferential standard for reviewing ineffective assistance of counsel claims." *Id.*, quoting *id.* at ¶ 22, citing *United States v. Dominguez Benitez*, 542 U.S. 74, 81-83 (2004); *State v. Thomas*, 2017-Ohio-8011, ¶ 33.

{¶ 78} The Ohio Rules of Evidence and Revised Code provide guidance regarding a witness's competence to testify. Evid.R. 601(A) provides that

[e]very person is competent to be a witness except as otherwise provided in these rules.

{¶ 79} Additionally, R.C. 2317.01 provides:

All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just

impressions of the facts and transactions respecting which they are examined, or of relating them truly.

{¶ 80} We note that both parties cite an older version of Evid.R. 601(A), which presumed that a child under ten was incompetent to testify unless proven otherwise. *State v. Simmons*, 2024-Ohio-3188, ¶ 22 (8th Dist.) (noting that former Evid.R. 601(A) contained “the presumption that children under the age of ten were incompetent to testify and ordered the trial court to conduct an examination to determine if they were competent”). However, the current rule “assumes competency of all witnesses unless they appear incapable of receiving just impressions of the facts and transactions respecting which they are examined.” *Id.*

{¶ 81} Therefore, contrary to Aldemur’s claim, Daughter is presumed competent unless the record reflects her inability to receive just impressions of the facts and transactions or relating them truthfully. Aldemur points to one aspect of Daughter’s testimony, the fact that she did not know Aldemur’s name in English, to suggest that she was incompetent to testify. However, Daughter knew and recited his name in Arabic and was able to relay her observations during her and Wife’s assaults in detail. Furthermore, neither party examined Daughter’s claim that she did not know Aldemur’s name in English, for example, by discussing which languages they spoke at home, what name Aldemur used with his family, or how she usually referred to Aldemur. Without more information, we cannot conclude that Daughter did not have just impressions of her family environment.

{¶ 82} Finally, Wife’s testimony corroborated much of Daughter’s testimony and vice versa. Based on the record before us, Aldemur has not established that allowing Daughter to testify was an obvious legal error that prejudiced him at trial.

{¶ 83} Accordingly, the second assignment of error is overruled.

D. Demonstrative Evidence and Testimony

{¶ 84} In the third assignment of error, Aldemur challenges the trial court’s decision to allow the State to use dolls during Wife’s testimony. Aldemur argues that the dolls were unnecessary since Wife was able to describe the events adequately and the dolls served to overly dramatize the events and inflame the jury.

{¶ 85} Demonstrative evidence is defined as “an object, picture, model, or other device intended to clarify or qualify facts for the jury.” *State v. Miller*, 2016-Ohio-8544, ¶ 89 (7th Dist.). Such evidence “is merely an aid in understanding certain facts.” *Id.*, citing *In re A.H.*, Ohio-2174, ¶ 54. Both Evid.R. 401 and 901 address the use and admissibility of demonstrative evidence. *State v. Sands*, 2008-Ohio-6981, ¶ 121 (11th Dist.). Evid.R. 901(A) provides:

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.

{¶ 86} The standard for admission under Evid.R. 901(A) is very low. Furthermore, “the proponent must present foundational evidence that is sufficient to constitute a rational basis for a jury to decide that the primary evidence is what its proponent claims it to be.” (Citations omitted.) *State v. Oldaker*, 2017-Ohio-1201, ¶ 25 (4th Dist.).

{¶ 87} Such evidence is admissible if it (1) satisfies the general standard of relevance in Evid.R. 401 and (2) is substantially similar to the object or occurrence that it is intended to represent. *State v. Jones*, 2012-Ohio-5677, ¶ 81, citing *State v. LaMar*, 2002-Ohio-2128, ¶ 90; *State v. Palmer*, 80 Ohio St.3d 543, 566 (1997); *State v. Beasley*, 2025-Ohio-4463, ¶ 39 (8th Dist.). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 401. “The trial court has discretion to determine whether demonstrative evidence is helpful or misleading to the trier of fact.” *Jones* at ¶ 82, citing *State v. Cowans*, 87 Ohio St.3d 68, 77 (1999); Evid.R. 403.

{¶ 88} We review the decision to admit the demonstrative evidence for an abuse of discretion. *Id.*, citing *State v. Herring*, 94 Ohio St.3d 246, 255 (2002). A trial court abuses its discretion when its decision is arbitrary, unreasonable, or unconscionable. *State v. Jones*, 2025-Ohio-5389, ¶ 19. This court “should not substitute its judgment for that of the trial judge absent an abuse of discretion.” *Branch v. Cleveland Clinic Found.*, 2012-Ohio-5345, ¶ 17. Finally, reversal is only warranted if it affects a substantial right, otherwise it is harmless error. Crim.R. 52(A) (“Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.”).

{¶ 89} In our review of the case law, we were not able to find any cases where an adult victim demonstrated a crime using a doll. Neither party cites to any case that addresses this fact pattern. Moreover, both parties cite one case each, that

indirectly supports their arguments. The State did not present any testimony describing the dolls, arguably, failing to lay a foundation as required by Evid.R. 901(A). Nevertheless, the trial court was able to observe the dolls, the State's use of them, and Wife's demonstrations. The requirements for authentication are low, so we cannot say that the trial court erred from that perspective. However, there are also the requirements that the evidence is relevant and that the demonstration be substantially similar to the occurrence it is designed to represent.

{¶ 90} Here, Wife was asked to demonstrate how Aldemur assaulted her on three occasions. “The general rule is that to render experiments . . . admissible, the conditions need not be identical with those existing at the time of the occurrence in question; it is sufficient if there is substantial similarity.” *State v. Jackson*, 86 Ohio App.3d 568, 571 (2d Dist. 1993), quoting *State v. Farrell*, 64 Ohio L. Abs. 481 (10th Dist. 1952). The record is devoid of any information to allow this court to determine whether the demonstration was substantially similar to the occurrence. Wife demonstrated three incidents, but none of the demonstrations are described on the record. We cannot on this record determine whether the trial court erred.

{¶ 91} Nevertheless, Aldemur failed to establish by citations to the record that he was prejudiced by the demonstrations, i.e., that there was an error that affected a substantial right. Therefore, if there was error, we find that it was harmless. The third assignment of error is overruled.

E. Sufficiency of the Evidence

{¶ 92} In the sixth assignment of error, Aldemur argues that his convictions were not supported by the sufficiency of the evidence. We disagree.

{¶ 93} A sufficiency challenge questions whether the State met its burden of production at trial and requires the reviewing court to consider not the credibility of the evidence but whether, if credible, the evidence presented would sustain a conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). 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. Jenks*, 61 Ohio St.3d 259, 273 (1991), citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). “When analyzing a claim of sufficiency of the evidence, a reviewing court is neither permitted to assess the credibility of witnesses nor otherwise weigh the evidence.” *State v. Young*, 2022-Ohio-3132, ¶ 47 (8th Dist.), citing *In re A.W.*, 2016-Ohio-7297, ¶ 33 (8th Dist.). Therefore, in a sufficiency assessment, the reviewing court assumes that witnesses testified truthfully and evaluates whether that testimony, along with any other direct or circumstantial evidence presented at trial, satisfies each element of the offense. *Cleveland v. Clark*, 2024-Ohio-4491, ¶ 39 (8th Dist.), citing *In re D.R.S.*, 2016-Ohio-3262, ¶ 23 (8th Dist.), and *State v. Wells*, 2021-Ohio-2585, ¶ 25 (8th Dist.).

1. Counts 2 and 3: Strangulation

{¶ 94} With respect to Counts 2 and 3, strangulation of Wife, Aldemur argues that the evidence presented was legally insufficient because the State failed to

present any contemporaneous medical evidence, such as bruising or medical reports, to substantiate that Wife was strangled. Additionally, he argues that Wife's testimony was vague and did not include specific dates and times. These questions address the weight of the evidence and not its sufficiency, i.e., they ask this court to weigh the evidence and determine whether there was enough evidence to support the conviction. Here, we assume that the witnesses testified truthfully, further, "[t]he testimony of one witness, if believed by the factfinder is enough." *D.R.S.* at ¶ 23.

{¶ 95} Convictions for strangulation pursuant to R.C. 2903.18(B)(2) and (3) require evidence that the defendant knowingly created a substantial risk of serious physical harm to the victim by means of strangulation or suffocation, and/or knowingly caused or created a substantial risk of physical harm to the victim by means of strangulation or suffocation. Count 3 also required evidence that Wife was a family or household member, which was not in dispute in this case.

{¶ 96} Many of these terms are statutorily defined. Relevant to this appeal, "physical harm to persons" is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). "Serious physical harm to persons" includes

- (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (b) Any physical harm that carries a substantial risk of death;
- (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

R.C. 2901.01(A)(5)(a)-(e).

{¶ 97} Next, a “substantial risk” is defined as “a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.” R.C. 2901.01(A)(8). Finally, “strangulation or suffocation” is defined as “any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck, or by covering the nose and mouth.” R.C. 2903.18(A)(1).

{¶ 98} Now that we have defined the relevant terms, we turn to the testimony presented at trial. Wife testified to two separate incidents that occurred within the same timeframe. First, she testified that Aldemur used both hands to choke her around the neck, that it hurt and was very painful. The State presented a picture of Wife showing substantial redness and a deeper-red scratch on her neck. Next, Wife testified that Aldemur pulled a blanket and pillow over her head and sat on her with all his weight. She further testified that she could not breathe, was unable to move, and “start[ed] just like to be like pass out, just see everything get black.” Daughter testified that she saw Aldemur put the pillow and blanket over Wife’s head and sit on her and, that when Wife stopped screaming, she began screaming because she knew Wife was in danger.

{¶ 99} Based on the foregoing, there was sufficient evidence to support the conviction under R.C. 2903.18(B)(3) where Wife testified that Aldemur choked her forcefully with both hands leaving a scratch and deep redness to her neck, establishing that he caused physical harm to Wife by means of strangulation or suffocation. Additionally, there was testimony that Aldemur knowingly created a substantial risk of serious physical harm where he covered Wife's head with a blanket and pillow and sat on her until she almost passed out, which supported a conviction under R.C. 2903.18(B)(2). A jury could infer from this testimony that had Aldemur continued to impede Wife's breathing there was a substantial risk of death. Accordingly, we find that sufficient evidence supported the strangulation convictions.

2. Counts 4, 5, 6, and 12: Domestic Violence

{¶ 100} These counts alleged that Aldemur committed the crime of domestic violence pursuant to R.C. 2919.25(A) (Counts 4 and 5, with Wife as the victim, and Count 6, with Daughter as the victim), and R.C. 2919.25(C) (Count 12 with Wife as the victim). Aldemur argues that these charges required proof that Aldemur knowingly caused or attempted to cause physical harm to a family member and that the State's case relied on Wife's uncorroborated testimony. Specifically, regarding Count 12, Aldemur also claims that the officers' testimony that they could not determine the primary aggressor undermined the State's case. Again, these arguments address the weight of the evidence and not its sufficiency.

{¶ 101} Aldemur does not challenge the elements that the alleged victim be a family or household member nor his prior conviction. Accordingly, we must determine whether the State presented sufficient evidence that Aldemur knowingly caused or attempted to cause physical harm to Wife and Daughter pursuant to R.C. 2919.25(A). Further, we must determine whether Aldemur, by threat of force, knowingly caused Wife to believe he would cause imminent physical harm to her or a family member pursuant to R.C. 2919.25(C).

{¶ 102} Wife testified that in early December 2023, Aldemur headbutted her, injuring her nose such that she needed surgery. Daughter testified that Wife's nose was "crooked" afterward, and two witnesses from Tri-C testified that they saw Wife with bandages on her nose during a video call. As to the second December incident, Wife testified that Aldemur grabbed her by the hair, pulled her to the ground, and dragged her to the bedroom. The State introduced pictures of bruises on Wife's arm. This testimony was sufficient to support a finding that Aldemur caused or attempted to cause physical harm to Wife pursuant to Counts 4 and 5.

{¶ 103} Both Wife and Daughter testified that Aldemur slapped Daughter. Daughter testified that he slapped her because she was screaming after he assaulted Wife. She described the slap as "painful." Therefore, sufficient evidence was presented to establish that Aldemur caused or attempted to cause physical harm to Daughter as charged in Count 6.

{¶ 104} Finally, Wife testified that Aldemur threatened to kill her and other family members and he referenced an incident in the news where a man had killed

his wife. Wife testified that she believed his threats because he had threatened to kill her before and had pointed a gun at her multiple times. Thus, there was sufficient evidence to support that Aldemur, by threat of force, caused Wife to believe that he would cause her imminent physical harm, as required to prove Count 12.

{¶ 105} Based on the foregoing, sufficient evidence supported the convictions for domestic violence.

3. Counts 7, 10, and 11: Endangering children

{¶ 106} Finally, Aldemur argues that there was insufficient evidence to establish that he created a substantial risk to Daughter's health or safety and thus his convictions for endangering children were not supported by sufficient evidence. Aldemur includes Count 11; however, the trial court granted Aldemur's Crim.R. 29 motion regarding that count and it was dismissed. Accordingly, we confine our review to Counts 7 and 10.

{¶ 107} In order to establish endangering children, the State needed to present evidence that a parent of a child under 18 years of age created a substantial risk to the health or safety of the child by violating a duty of care, protection, or support.

{¶ 108} Aldemur's primary argument is that Daughter was incompetent to testify, which we have overruled. In addition, he argues that the State failed to establish that he created a substantial risk. We disagree.

{¶ 109} In a recent case, this court noted that the analysis for substantial risk regarding an endangering-children charge is fact specific and determined on a case-by-case basis. *State v. Carpenter*, 2026-Ohio-116, ¶ 70 (8th Dist.). “Substantial risk” holds the same meaning in the endangering children statute as in strangulation, i.e., “a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.” R.C. 2901.01(A)(8). In *Carpenter*, after surveying relevant case law, we found that based on the limited record in that case, a substantial risk to the child’s health or safety was not established based solely on the child’s witnessing of the incident. *Id.* at ¶ 74.

{¶ 110} We have a more detailed record in this case; additionally, the facts establish that Daughter did not merely witness the incidents. In one of the December incidents, Daughter testified that after watching Aldemur nearly suffocate Wife, Aldemur slapped her when she screamed. Afterwards, he “kicked” Daughter out of the house, along with Wife. In a separate incident, Daughter testified that after she returned from Jordan, Aldemur demanded that she give him the passcode to Wife’s phone. When she repeatedly told him that she did not know the code, she testified that he hit her on her leg. The State introduced a photo of her bruises. Wife testified that this happened during the June 2024 incident where Aldemur threatened to kill Wife and other family members. This evidence was sufficient to establish Aldemur created a substantial risk to Daughter’s health and welfare.

{¶ 111} Based on the foregoing, all of Aldemur’s convictions were supported by sufficient evidence. Accordingly, we overrule the sixth assignment of error.

F. Manifest Weight of the Evidence

{¶ 112} In the seventh assignment of error, Aldemur challenges whether his convictions were supported by the manifest weight of the evidence. Aldemur bases his weight-of-the-evidence argument on three factors, (1) that the officers’ confusion regarding who was the primary aggressor in the June 2024 incident was enough to cast doubt on the verdict; (2) the withheld video of Wife assaulting Aldemur deprived the jury of a critical piece of evidence; and (3) the dispute regarding the validity of Wife’s testimony identifying pictures of her injuries called the convictions into question. Aldemur’s arguments lack merit.

{¶ 113} “[W]eight of the evidence involves the inclination of the greater amount of credible evidence.” *Thompkins*, 78 Ohio St.3d at 387 (1997). Weight of the evidence concerns “the evidence’s effect of inducing belief.” *State v. Wilson*, 2007-Ohio-2202, ¶ 25, citing *Thompkins* at 386-387. A court of appeals must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses to determine “whether in resolving conflicts in the evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983). Furthermore, “[a]n appellate court sits as the thirteenth juror only when evidence contradicts a factfinder’s findings, or when a witness’s testimony is so inconsistent as to material

facts, so impeached, or so fantastical as to make it patently unbelievable.” *State v. Reillo*, 2026-Ohio-2701, ¶ 3, citing *State v. Martin*, 2022-Ohio-4175, ¶ 26.

{¶ 114} To the extent Aldemur’s argument relies on the alleged missing video and the “false” testimony about the pictures, we have already addressed that evidence, and found there were no *Brady* violations. We therefore evaluate the evidence as presented and consider Aldemur’s arguments as challenges to the credibility of the State’s witnesses. With respect to the officers’ failure to determine who was the primary aggressor, that testimony is not dispositive. The jury heard the testimony of the officers, Wife, Daughter, and other witnesses, which supported the testimony of the victims, as well as Aldemur’s testimony regarding what happened. The jury was in the best position to evaluate the testimony and assign credibility or the lack of credibility of the witnesses. In the instant case, Officer McConnell testified that they were unable to determine the primary aggressor because both Wife and Aldemur alleged threats and violence by the other. However, the jury was able to evaluate the credibility of Wife and Aldemur as well and ultimately found the greater weight of the evidence supported conviction.

{¶ 115} Accordingly, the seventh assignment of error is overruled.

G. Merger of Offenses

{¶ 116} In the fifth assignment of error, Aldemur alleges that the trial court erred when it failed to merge the offenses. The defense does not support its argument by identifying which counts should merge; however, the State concedes that the trial court should have merged some of the counts. Specifically, the State

recommends that the charges with Daughter as the victim, i.e., Counts 6 and 7, domestic violence and endangering children, should merge with one another, and Counts 9 and 10, domestic violence and endangering children, should merge with one another. However, the State argues the remaining offenses were separate incidents and should not merge with each other or the remaining charges. We agree.

{¶ 117} When a defendant’s conduct “supports more than one offense . . . a court must conduct an analysis of allied offenses of similar import to determine whether the offenses merge or whether the defendant may be convicted of separate offenses.” *State v. Ruff*, 2015-Ohio-995, ¶ 24, citing R.C. 2941.25(B). When offenses are found to be allied offenses of similar import, the offender, though charged with two or more offenses, may only be convicted of a single offense. *Id.* at ¶ 13, citing R.C. 2941.25(A).

{¶ 118} A three-part test is employed to determine whether offenses should merge. *State v. Earley*, 2015-Ohio-4615, ¶ 12. We must consider the following:

(1) Were the offenses dissimilar in import or significance — in other words, did each offense cause separate identifiable harm? (2) Were they committed separately? And (3) [w]ere they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.

Ruff at ¶ 31.

{¶ 119} Based on our review of the record, we agree with the State that Counts 2 and 3 do not merge. Wife testified to two separate incidents of strangulation. Moreover, testimony was offered regarding the separate identifiable harm caused

when Aldemur choked Wife with both hands and when he covered her face, sat on her, and caused her to almost pass out.

{¶ 120} Likewise, Counts 4 and 5 do not merge where the testimony established that Aldemur headbutted Wife in early December then pulled her by the hair to the ground and then dragged her across the floor on a later date. The incidents were distinct in time and caused separate injuries. Finally, Count 12 was a separate incident on a different date involving threats to Wife.

{¶ 121} In contrast, Counts 6 and 7, which alleged domestic violence and endangering children against Daughter encompassed a course of conduct that included Aldemur assaulting Wife and slapping Daughter when she reacted to his conduct. We cannot say that the conduct included separate identifiable harm to Daughter. The acts happened at the same time, they did not encompass distinct harm, and the animus was the same.

{¶ 122} With respect to Counts 9 and 10, the second domestic violence and endangering children counts with Daughter as the victim in June 2024, merger is also appropriate. Wife testified that after the June 2024 incident, she learned that Aldemur had assaulted Daughter. Daughter testified that sometime after she returned from Jordan in May 2024, Aldemur took Wife's phone, demanded that Daughter give him the passcode, and hit Daughter sharply on her leg when she could not provide the passcode. Here, the incidents happened at the same time, did not encompass distinct harm, and arose from the same animus.

{¶ 123} Based on the foregoing, we sustain Aldemur’s fifth assignment of error, vacate the sentence on Counts 6, 7, 9, and 10, and remand for the State to elect which charges it wishes to proceed on for sentencing and for resentencing.

H. Impositions of Fines, Costs, and Fees

{¶ 124} Finally, in the eighth assignment of error, Aldemur alleges that the trial court “erred in issuing a nunc pro tunc entry imposing full court costs contrary to the oral pronouncement at sentencing waiving half the costs.” Contrary to Aldemur’s assertion, however, the trial court’s nunc pro tunc entry did not change the order of costs. Both the original entry and the nunc pro tunc entry state that

[o]nly half of costs and fees are assessed against defendant. Defendant is ordered to pay only half of costs and fees, or perform court community work service within the confines of the prison and with the wardens approval in lieu of cash payment. Defendant declared indigent. Supervision fee waived, fine(s) waived, repayment of assigned counsel fee(s) waived. . . . The court hereby enters judgment against the defendant in an amount equal to the costs of this prosecution.

{¶ 125} The nunc pro tunc entry corrected an omission in the appearances by adding Aldemur’s counsel to the corrected entry. Aldemur’s assignment of error is overruled to the extent it challenges the nunc pro tunc entry because it did not change the original sentencing entry regarding fines, costs, and fees. However, Aldemur also argues that “[a] sentence pronounced in an entry contrary to what was ordered by the trial court at oral hearing is contrary to law and does not afford a defendant his right to be present at every stage of the proceeding.” This court has recognized that “costs of prosecution” and “court costs” are synonymous terms. *State v. Jones*, 2020-Ohio-1273, ¶ 30 (8th Dist.). To the extent the trial court’s entry

requires Aldemur to pay “the costs of prosecution” rather than half the costs, it deviates from the court’s oral pronouncement during the sentencing hearing. Accordingly, we remand for the trial court to correct this portion of its sentencing entry.

{¶ 126} Judgment affirmed in part, vacated in part, and remanded. The sentences for Counts 6, 7, 9, and 10 are vacated, and the matter is remanded for the State to elect the counts it will proceed on for resentencing, i.e., Count 6 or 7 and Count 9 or 10, respectively, and for resentencing. The matter is further remanded for the trial court to correct its sentencing entry regarding court costs.

It is ordered that appellee and appellant share the 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.

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

EMANUELLA D. GROVES, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
TIMOTHY W. CLARY, J., CONCUR