

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-250555
	:	TRIAL NO. 25/CRB/12304
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY</i>
MARK DURGAN,	:	
Defendant-Appellant.	:	

**MOORE, Judge.**

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

This appeal arises from a dispute between neighbors after one found a tracking device affixed underneath her car. We overruled defendant-appellant Mark Durgan's three assignments of error and affirm the trial court's judgment.

*Facts and Procedure*

N.B. and Durgan were neighbors and often parked near one another. However, N.B. testified her relationship with Durgan turned contentious after she testified against him in another criminal trial involving Durgan's ex-girlfriend. Months following testifying, N.B. discovered a small, round, black tracking device near the gas tank of her car. She testified that she believed that Durgan placed the tracker on her car in an attempt to discover his ex-girlfriend's location. N.B. also believed that Durgan was responsible because he had parked immediately behind her for roughly a week

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before the tracker was discovered. N.B. took the tracker to the police station and filed a complaint.<sup>1</sup>

Cincinnati Police Detective Randilyn Bryant presented evidence to show that the tracker was registered to Durgan. Detective Bryant testified that after serving a search warrant on the tracker's manufacturer, Bryant discovered that the tracker was registered to "Mark Durgan." Bryant testified that from a review of the tracker's records, it was activated on May 11, 2025, and was remotely deactivated on May 16, 2025.

Durgan denied placing the tracker on N.B.'s car. Durgan conceded that the tracker was under his account and that it was only active for six days. Durgan explained that he kept a tracker on his car after it had been stolen, but denied ever placing one on N.B.'s car. He believed that the tracker was initially on his car, but that someone removed it and placed it on N.B.'s car. Durgan testified that the only other person who knew of his use of the trackers was his ex-girlfriend, and that he believed that she was trying to frame him.

During Durgan's cross-examination, the State introduced a map of the tracker's GPS locations from May 11 through May 16. Durgan stated that he would intermittently view the tracking data for the tracker but did not realize that the tracker was on N.B.'s car. At one point, Durgan disputed that the map reflected the tracking data from the tracker retrieved from N.B.'s car and stated that these looked like his delivery routes. However, Durgan could not state for certain that the locations were attributable to his movements. The map of the tracker's GPS locations included the

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<sup>1</sup> We note that Durgan was charged with aggravated menacing. However, because the disposition of that count is not the subject of this appeal, we decline to address it.

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police station where N.B. said she had taken the tracker when she filed the complaint. Durgin denied that he drove to the police station while the tracker was active.

The court found Durgan guilty of illegal use of a tracking device. Durgan was sentenced to 30 days in jail with credit for 11 days served, and a term of community control. An added condition of Durgan's community control prohibited him from possessing guns. Durgan's sentence was stayed pending this appeal.

Durgan raises three assignments of error, and we address each of these in turn below.

*Sufficiency*

In his first assignment of error, Durgan argues his conviction was based on insufficient evidence because the evidence did not show (1) that he knowingly installed the tracking device on N.B.'s car, and (2) that he used the device to track N.B.

A challenge to the sufficiency of the evidence requires the reviewing court to determine whether the State satisfied its burden of production. *State v. Harper*, 2025-Ohio-2059, ¶ 12 (1st Dist.). To determine whether a conviction is supported by sufficient evidence, we “assess whether, construing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the necessary elements of a given crime to have been proved beyond a reasonable doubt.” *State v. Rodriguez*, 2024-Ohio-5832, ¶ 8 (1st Dist.).

R.C. 2903.216(B) provides, in part, “no person shall knowingly do *either* of the following: (1) [i]ninstall a tracking device or tracking application on another person's property without the other person's consent or cause a tracking device *or* tracking application to track the position or movement of another person or another person's property without the other person's consent.” (Emphasis added.) Thus, the State had

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to prove that Durgan either knowingly installed the tracker or knowingly used the tracker without N.B.'s consent.

Circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. *State v. Robinson*, 2023-Ohio-2312, ¶ 19 (1st Dist.). Circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt. *Id.* at ¶ 19.

Durgan's conviction was supported by circumstantial evidence. Both Durgan and N.B. testified that they parked next to one another. Durgan and N.B. had a terse relationship after N.B. testified against him. Durgan admitted that the tracker found on N.B.'s car was registered in his name. The tracker was activated and soon discovered by N.B. and was deactivated once it was given to the police. Durgan's testimony that the map displayed his delivery routes and not the tracker on N.B.'s car was contradicted by Durgan's denial that he had driven the car to the police station. When viewing these facts in a light most favorable to the State, the State put forth sufficient circumstantial evidence to support Durgan's conviction.

Because the State put forth sufficient evidence that Durgan knowingly installed the tracker, the State did not need to establish that Durgan knowingly tracked N.B. Therefore, Durgan's first assignment of error is overruled.

*Manifest Weight*

Durgan asserts in his second assignment of error that his conviction was against the manifest weight of the evidence because N.B. was "entirely biased" against him, her testimony was uncorroborated, and she contradicted herself.

A manifest-weight challenge concerns the plaintiff's burden of persuasion. *State v. Brown*, 2025-Ohio-2351, ¶ 18 (1st Dist.). We "weigh the evidence and all

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reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way.” (Cleaned up.) *State v. Martin*, 2022-Ohio-4175, ¶ 26, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). A conviction is not against the manifest weight because the fact finder believed the prosecution’s witnesses. *Brown* at ¶ 18.

Under Evid.R. 616(A), bias may be shown to impeach the witness either by examination of the witness or by extrinsic evidence. Here, although N.B. was cross-examined, Durgan failed to introduce evidence of witness bias or to impeach her on that basis.

Durgan’s manifest-weight challenge also fails with respect to Durgan’s assertion that N.B. lied when she reported that Durgan had put the tracker on her car, and that a reasonable inference can be drawn that Durgan’s ex-girlfriend told N.B. about the tracker. It was the trial court’s prerogative to weigh the witnesses’ credibility. Ultimately, the court was well positioned to conclude that N.B. was credible. In making its credibility determination, the trial court was also able to pair the witness testimony with the other evidence introduced at trial, including evidence that the tracker was registered to Durgan, he intermittently reviewed the tracker’s data, the tracker was deactivated after it was turned over to police, Durgan had a contentious relationship with N.B., and Durgan was unsure if the tracking data accurately reflected his movements and not N.B.’s. Therefore, we cannot say that the court lost its way in convicting Durgan. Accordingly, Durgan’s second assignment of error is overruled.

*Community Control*

In his third assignment of error, Durgan argues that the trial court’s order that he not possess firearms while on community control was not reasonably related to the

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crime he was convicted of and that it was not reasonably related to his rehabilitation. *See State v. Ballish*, 2026-Ohio-503, ¶ 6-10.

We review a court’s imposition of community-control conditions for an abuse of discretion. *Id.* at ¶ 10. R.C. 2929.25(C)(2) provides that a trial court may impose additional requirements as a condition of community control in the interest of justice, rehabilitating the offender, and ensuring the offender’s good behavior.

When considering the trial court’s concerns that Durgan’s conduct was intimidating, paired with the seriousness of remotely tracking an adverse witness, the trial court was justified in ensuring that Durgan’s behavior did not escalate while on community control. Importantly, this restriction was imposed only during the community-control period, rather than as a lifelong disability. Because the trial court did not abuse its discretion, Durgan’s third assignment of error is overruled.

For the foregoing reasons, the trial court’s judgment is affirmed.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

**ZAYAS, P.J.**, and **NESTOR, J.**, concur.

**To the clerk:**

**Enter upon the journal of the court on 6/18/2026 per order of the court.**

By:  \_\_\_\_\_  
**Administrative Judge**