

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

STATE OF OHIO,	:	APPEAL NO.	C-250293
Plaintiff-Appellee,	:	TRIAL NO.	C/25/CRB/2172/B
vs.	:		
			<i>JUDGMENT ENTRY</i>
WALTER WHERRY,	:		
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.

Defendant-appellant Walter Wherry was arrested for inducing panic in violation of R.C. 2917.31, a first-degree misdemeanor, disorderly conduct in violation of R.C. 2917.11(B)(1), a fourth-degree misdemeanor, resisting arrest in violation of R.C. 2921.33, a second-degree misdemeanor, and obstructing official business in violation of R.C. 2921.31, a second-degree misdemeanor.

Colerain Township Police Officers Bernecker and Meinking testified at the bench trial. Officer Bernecker explained that she responded to a call that a woman was not breathing after either falling or being pushed, then hitting her head, while inside Tyme Out Sports Bar (“the Bar”), and that “the male subject had taken off towards Walmart.” She testified that, upon arriving on the scene, she saw Wherry running between buildings and then toward the Bar. She stated that, upon encountering

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

Wherry, she could tell that he was “highly intoxicated” based on his slurred speech and instability on his feet, he was not listening to commands, and he pulled his arm away while being handcuffed.

Officer Bernecker’s body-worn-camera (“BWC”) footage was played in open court from the point when Officer Bernecker got out of her police car until Wherry was handcuffed. The beginning of the footage depicted Wherry walking toward the Bar as Officer Bernecker approached him, then stopping and putting his hands in the air once Officer Bernecker ordered him to put his hands on the wall. On cross-examination, Officer Bernecker testified that she saw Wherry walking—not running—between two buildings toward the Bar. She conceded that Wherry was confused when she told him to face the wall, but that he eventually obeyed.

After Wherry had been handcuffed and placed in a police car, Officers Bernecker and Meinking entered the Bar to investigate further. Officer Bernecker testified that the patrons inside the Bar informed her that there was an altercation and K.M.—the woman officers received a call about—had either been pushed or she had fallen during the altercation. Officer Bernecker remembered a man who was sitting inside the Bar with a cut on his face.

Officer Meinking testified that he overheard Officer Bernecker telling Wherry to put his hands on the wall when he arrived on the scene. Portions of his BWC footage were also played in open court. Officer Meinking stated that Wherry put his hands in the air and continued to walk away, but that Wherry did put his hands on the wall as Officer Bernecker approached him. The officer explained that Wherry was “highly intoxicated” as he smelled of alcohol and his words were “slow and slurred,” that Wherry’s demeanor was “consistent and normal of that of an intoxicated person,” and that Wherry appeared to be confused.

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

Officer Meinking testified that he charged Wherry with disorderly conduct while intoxicated based on Wherry's actions during the "incident" inside the Bar, and because Wherry's "highly intoxicated" state on a public sidewalk "could have created a hazard to his safety, our safety, and other patrons' safety who might be operating vehicles in the parking lot."

On cross-examination, Officer Meinking conceded that Wherry responded, "Yes, sir," when he ordered Wherry to put his hands behind his back and that it took two seconds to get the left arm—the arm that Officer Meinking claimed Wherry tensed up to prevent being handcuffed—behind his back. He also conceded that one minute elapsed between the time when he arrived on the scene and when Wherry was placed in handcuffs. He stated that Wherry was not yelling and did not try to fight him "other than just the resisting." Officer Meinking did not dispute that Wherry is "an older man" who potentially had difficulty moving quickly in responding to the officers' commands.

The trial court found that Wherry's actions did not rise to the level of resisting arrest, nor was there "enough time" for his actions to be obstructive, but it found him guilty of disorderly conduct. The court imposed a \$150 fine and court costs.

On appeal, Wherry argues that there was no sufficient or credible evidence to show that his conduct, while intoxicated, was likely to be offensive or cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities. *See* R.C. 2917.11(B)(1). He asserts that there was no testimony from anyone present during the fight inside the Bar to show that he caused them alarm or inconvenience, or to describe how his behavior in the parking lot was likely to be offensive or alarming to people of ordinary sensibilities.

A challenge to the sufficiency of the evidence requires the reviewing court to determine whether the State has satisfied its burden of production. *State v. Harper*,

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

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.” *Id.*, quoting *State v. Rodriguez*, 2024-Ohio-5832, ¶ 8 (1st Dist.).

When applying the manifest-weight standard of review, a reviewing 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 finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed, and a new trial ordered. *State v. Champion*, 2021-Ohio-4002, ¶ 14 (1st Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

“A manifest-weight-of-the-evidence argument challenges the believability of the evidence.” *State v. Strietelmeier*, 2022-Ohio-2370, ¶ 7 (1st Dist.), quoting *State v. Staley*, 2021-Ohio-3086, ¶ 10 (1st Dist.). It concerns the plaintiff’s burden of persuasion. *State v. Brown*, 2025-Ohio-2351, ¶ 18 (1st Dist.). The trier of fact is in the best position to judge the credibility of the witnesses; thus, we afford substantial deference to the trier of fact’s credibility determinations. *Id.*

A conviction may be reversed under a manifest-weight review only in exceptional cases where the evidence weighs heavily against the conviction. *Id.* A conviction is not against the manifest weight of the evidence simply because the fact finder believed the prosecution’s witness. *Id.* Further, a defendant is not entitled to a reversal on manifest-weight grounds merely because inconsistent evidence was presented at trial; the trier of fact is free to believe some, all, or none of any witnesses’ testimony. *State v. Ridley*, 2022-Ohio-2561, ¶ 25 (1st Dist.).

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

R.C. 2917.11(B)(1) provides, “No person, while voluntarily intoxicated, shall . . . [i]n a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others.” Here, the complaint stated that Wherry’s charge was based on “officers observing the subject highly intoxicated in the parking lot of a bar after a bar fight.” Although the complaint mentions the bar, the public place where Wherry was alleged to have been disorderly while intoxicated was the parking lot. Therefore, the “public place” element was met, and police officers constitute persons of ordinary sensibilities for purposes of R.C. 2917.11(B). *See State v. Napier*, 2010-Ohio-563, ¶ 28 (2d Dist.).

The evidence contradicts the officers’ testimony that Wherry’s conduct was disorderly. Although Officer Meinking raised the issue of safety risks, that is an element under R.C. 2917.11(B)(2),<sup>1</sup> not R.C. 2917.11(B)(1). Next, the footage that was played before the court shows Wherry walking toward the Bar when Officer Bernecker approached him and then immediately putting his hands up while, though apparently confused, trying to comply with Officer Bernecker’s commands. Further, Officer Meinking conceded that Wherry was not yelling or fighting with officers while in the parking lot, and he was cooperative both while he was being handcuffed and after. *See, e.g., id.* at ¶ 18 (Reasonable minds could find that defendant’s screaming, her harsh and irate manner, and her denunciation of the officers as crooked, coupled with the odor of alcohol, caused annoyance, inconvenience, and/or alarm to the officers who

---

<sup>1</sup> “No person, while voluntarily intoxicated, shall . . . engage in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.” R.C. 2917.11(B)(2).

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

were dispatched to defendant's home on official business.); *State v. Florence*, 2014-Ohio-2337, ¶ 17 (12th Dist.) (Deputies testified that an intoxicated Florence was loud, confrontational, and boisterous outside of his residence in the presence of both deputies and two witnesses who were inside the residence and separated only by a screen door.).

Wherry's conduct while being arrested in the parking lot did not rise to the level of disorderly conduct while intoxicated. Accordingly, we hold that the evidence was insufficient to establish a violation of R.C. 2917.11(B)(1). Because we have held that Wherry's conviction was not supported by sufficient evidence, we do not address his challenge to the weight of the evidence. For those reasons, we sustain Wherry's sole assignment of error, and reverse the trial court's judgment, and discharge Wherry from further prosecution.

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 to Appellee.

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

**To the clerk:**

**Enter upon the journal of the court on 4/8/2026 per order of the court.**

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