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

STATE OF OHIO,	:	APPEAL NO. C-260025 TRIAL NOS. 24/TRC/31972/A/C
Plaintiff-Appellee,	:	
vs.	:	
FREDERICO LEWIS,	:	*JUDGMENT ENTRY*
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hunsley
Administrative Judge

IN THE COURT OF APPEALS
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STATE OF OHIO,	:	APPEAL NO.	C-260025
		TRIAL NOS.	24/TRC/31972/A/C
Plaintiff-Appellee,	:		
vs.	:		
			O P I N I O N
FREDERICO LEWIS,	:		
Defendant-Appellant.	:		

Criminal Appeal From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: September 25, 2026

Emily Smart Woerner, City Solicitor, *Susan M. Zurface*, Chief Prosecuting Attorney, and *Dahkota Parish*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Angela Chang, Hamilton County Public Defender, and *Margaret Kane*, Assistant Public Defender, for Defendant-Appellant.

NESTOR, Judge.

{¶1} In the early morning hours of a cold December day, Cincinnati Police Officer Mellman discovered a lone occupant in a car crashed into a concrete wall. With an empty beer can in the vehicle with him, Frederico Lewis was unresponsive to Officer Mellman's attempts to communicate. Emergency medical services ("EMS") later arrived to help retrieve Lewis, and Officer Mellman perceived a strong alcoholic odor coming from the car.

{¶2} The trial court found Lewis guilty of operating a vehicle while impaired and failure to control this vehicle. On appeal, Lewis asks this court to review whether the State presented both sufficient and credible evidence to support his convictions. We find that the State satisfied its burdens of production and persuasion.

I. Factual and Procedural History

{¶3} Following a bench trial, the court found Lewis guilty of operating a vehicle while under the influence of alcohol ("OVI") in violation of R.C. 4511.19(A)(1)(a) and failure to control his vehicle ("FTC") in violation of R.C. 4511.202.

{¶4} On December 1, 2024, Officer Mellman, the sole testifying witness, was on routine patrol when he came upon a motor vehicle accident around 3:00 a.m. Officer Mellman saw that the car had crashed into a short concrete wall. Although Officer Mellman could not testify as to whether the car crossed the double yellow line, he noted that the car was facing the wrong direction on the road. As Officer Mellman approached the vehicle, he observed Lewis slumped over the center console. Lewis's hips were in the air, and his head was on the passenger side of the vehicle. Officer Mellman called for EMS. Officer Mellman also observed a beer can and beer bottle in the car. The can was open and completely empty. At trial, he could not specifically recall if the bottle was open and partially full or closed.

{¶5} Officer Mellman banged on the car's windows, but Lewis did not respond. When EMS arrived, they shattered Lewis's window to unlock the car. Officer Mellman smelled alcohol coming from the inside of Lewis's car. EMS helped Lewis sit upright, and Officer Mellman observed a gash on his forehead. Officer Mellman testified that Lewis smelled like alcohol and he could smell alcohol on Lewis's breath. In his brief and at oral argument, Lewis highlighted that it would have been difficult for Officer Mellman to smell his breath while Lewis was in the car due to an EMS responder standing between the two of them. Officer Mellman testified that Lewis was slurring his speech but was candid that this could have been from alcohol or from the head wound.

{¶6} Because of Lewis's injuries, Officer Mellman could not conduct a field sobriety test. At the hospital, Lewis asked for an attorney. Officer Mellman, as required, considered that a refusal of a blood or urine sample.

{¶7} The State admitted Officer Mellman's body-worn-camera video as an exhibit and then rested. The defense moved for a judgment of acquittal, which the court denied. The defense rested and renewed their motion. The court found Lewis guilty of an OVI and FTC.

{¶8} Relying on the Ohio Jury Instructions, the court explained that "[u]nder the influence means the defendant consumes some alcohol whether mild or potent in such a quantity whether small or great that it adversely affected it or mostly impaired the defendant's actions, reactions or mental processes under the circumstances then existing and deprived the defendant of the clearness of intellect and control of himself that he would otherwise possess." The court determined Lewis did consume alcohol based on the strong odor of alcohol coming from him.

{¶9} For the FTC charge, the court found that there was not snow on the

roadway even though there was a light layer of snow on nearby parked cars. The court determined it was Lewis's alcohol consumption that led to the failure to control his vehicle.

{¶10} Lewis now appeals bringing two assignments of error.

II. Analysis

{¶11} In his first assignment of error, Lewis argues the trial court committed plain error in allowing Officer Mellman to testify. In his second assignment, Lewis argues that the trial court erred in finding him guilty because the convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.

A. First Assignment of Error

{¶12} In his first assignment of error, Lewis argues that Officer Mellman was not competent to testify under Evid.R. 601. Evid.R. 601(B)(4) provides that "[a] person is disqualified to testify as a witness when the court determines that the person is any of the following: An officer, while on duty for the exclusive or main purpose of enforcing traffic laws . . . was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute." Lewis does not challenge that Officer Mellman was in a marked police car; he only challenges that Officer Mellman did not testify whether he was in uniform.

{¶13} Lewis did not raise this argument below. On appeal, he contends that this issue amounts to plain error. Crim.R. 52(B) provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." However, in *State v. Panzeca*, 2020-Ohio-4448 (1st Dist.), we held that a defendant waived the issue of an officer's competency on appeal by failing to object. We stated, "[The defendant] admits that that he did not raise the issue of the officer's competency at trial and contends that we should review this issue

under the plain-error standard of review. However, we find that because [the defendant] did not raise the issue of [the officer's] competency at trial, he has waived the issue on appeal." *Id*. at ¶ 7.

{¶14} Lewis carried the burden below to establish that the officer was not competent to testify. *See State v. Moore*, 2010-Ohio-518, ¶ 18 (8th Dist.), citing *State v. Rau*, 65 Ohio App.3d 478, 480 (3d Dist. 1989) ("The defendant bears the burden of proving the circumstance resulting in the officer's incompetency, e.g., that the officer was wearing a nondistinct uniform."). Without Lewis challenging Officer Mellman's competency below, there is no evidence in the record concerning whether Officer Mellman was in uniform or not. *Id*. at ¶ 19, citing *Rau* at 481. And if Officer Mellman was not in uniform then it would have been Lewis's responsibility to challenge Officer Mellman's competency. We, therefore, cannot say that this amounted to plain error.

{¶15} Accordingly, we overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶16} In his second assignment of error, Lewis argues that his OVI and FTC convictions were based on insufficient evidence and were against the manifest weight of the evidence.

1. Sufficiency of the Evidence

{¶17} In reviewing the sufficiency of the evidence, we must determine whether "'any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.'" *State v. Smith*, 80 Ohio St.3d 89, 113 (1997), quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. In making this determination, we must view the evidence in the light most favorable to the State. *Id*., quoting *Jenks* at paragraph two of the syllabus.

a. OVI

{¶18} An individual is guilty of OVI if when operating the vehicle, the "person is under the influence of alcohol, a drug of abuse, or a combination of them." R.C. 4511.19(A)(1)(a). The State presented Officer Mellman's testimony as evidence. Officer Mellman testified that he saw beer containers in the car and that there was a strong odor of alcohol coming from both Lewis and his crashed car. "[A]ny lay witness, including a police officer, may testify as to whether an individual appeared intoxicated." *City of Cleveland v. Goode*, 2026-Ohio-2824, ¶ 21 (8th Dist.), citing *State v. Clark*, 2007-Ohio-3777, ¶ 13 (8th Dist.). "Field-sobriety or chemical tests are not required to prove an OVI conviction." *Id.*, citing *Cleveland v. Giering*, 2017-Ohio-8059, ¶ 30 (8th Dist.). Physiological factors can establish impairment. *Id.*, citing *Solon v. Hrivnak*, 2014-Ohio-3135, ¶ 18 (8th Dist.).

{¶19} Here, the State presented sufficient evidence to show Lewis was operating the vehicle while impaired. Officer Mellman testified that he saw beer containers in Lewis's car and that he perceived a strong odor of alcohol coming from both Lewis and Lewis's car.

b. FTC

{¶20} The FTC statute states, "No person shall operate a motor vehicle . . . on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle." R.C. 4511.202(A). Lewis argues that the State did not present evidence that Lewis caused the accident. Specifically, Lewis states "[t]he accident was never shown to have been caused by excessive speed, for example, or inattentiveness, or impairment."

{¶21} However, the State presented evidence that the accident was caused by impairment. Officer Mellman testified to Lewis's impairment. The court specifically

found that Lewis's "alcohol consumption did lead to the fact that he was unable to control his vehicle." The State presented sufficient evidence for the fact finder to conclude that Lewis failed to control his vehicle due to his impairment.

2. Manifest Weight of the Evidence

{¶22} "[W]hile a review of the sufficiency of the evidence asks whether the State met its burden of production, a manifest-weight-of-the-evidence challenge looks to whether the State met its burden of persuasion." *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 24, citing *State v. Messenger*, 2022-Ohio-4562, ¶ 26. The manifest-weight-of-the-evidence standard refers to whether there is a "'greater amount of credible evidence . . . to support one side of the issue rather than the other.'" *Id.* at ¶ 25, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12. When deciding whether a judgment entered by the trial court is against the manifest weight of evidence, the appellate court "'must always be mindful of the presumption in favor of the finder of fact.'" *Id.* at ¶ 28, quoting *Eastley* at ¶ 21. This is an exceptional remedy that we reserve for cases where "'the evidence weighs heavily against the conviction.'" *State v. Cook*, 2024-Ohio-4771, ¶ 27 (1st Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶23} Here, the State met its burden of persuasion on both the OVI and FTC charges. The trial court made specific factual findings for each element. Although Lewis correctly pointed out that Officer Mellman likely would not have been able to smell his breath due to an EMS responder standing between the two of them, Officer Mellman also perceived a strong alcoholic odor in the vehicle itself. The court found Officer Mellman credible.

{¶24} Lewis relies on *State v. Richards*, 2016-Ohio-3518 (1st Dist.), for the proposition that "[a] minor traffic violation coupled with the odor of alcohol alone is

insufficient to establish probable cause," so it is insufficient to sustain a conviction. *Id.* at ¶ 29, quoting *City of Cincinnati v. Bryant*, 2010-Ohio-4474, ¶ 25 (1st Dist.). However, "evidence of a minor traffic violation, the odor of alcohol, plus 'some reasonable indicia' of impairment is sufficient to establish probable cause." *Id.*, citing *Bryant* at ¶ 25. Here, the State presented more than a minor traffic violation, the odor of alcohol, and reasonable indicia of impairment. The State presented a car accident in the early morning hours, with open containers, and the odor of alcohol. Lewis's convictions were not against the manifest weight of the evidence.

{¶25} Accordingly, we overrule appellant's second assignment of error.

III. Conclusion

{¶26} Having overruled both assignments of error, we affirm the judgments of the trial court.

Judgments affirmed.

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