[Cite as *State v. Morgan*, 2026-Ohio-4706.]

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

STATE OF OHIO,	:	APPEAL NO. C-260103 TRIAL NOS. 25/CRB/1864/A/B
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
JIMMY MORGAN,	:	
Defendant-Appellant.	:	

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

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 11/25/2026.

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:_____
Administrative Judge

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STATE OF OHIO,	:	APPEAL NO. C-260103 TRIAL NOS. 25/CRB/1864/A/B
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
JIMMY MORGAN,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: November 25, 2026

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

Angela W. Chang, Hamilton County Public Defender, and *Lora Peters*, Assistant Public Defender, for Defendant-Appellant.

MOORE, Judge.

{¶1} Defendant Jimmy Morgan appeals his convictions for disorderly conduct and resisting arrest. Because both convictions were supported by sufficient evidence and were not against the manifest weight of the evidence, we affirm the judgments of the trial court.

I. Factual and Procedural History

{¶2} On February 4, 2025, Cincinnati Police Officer Soren Koch-Hutchinson found Jimmy Morgan hiding underneath cars in the Cincinnati Fire Department's employee parking lot. After being discovered, Morgan told Officer Koch-Hutchinson and other officers that he had found a dead baby in a nearby abandoned building. The officers did a sweep but did not uncover anything unusual.

{¶3} The officers then transported Morgan to the lobby of the Cincinnati Police District 3 building. Once there, the officers decided to move Morgan to a facility to receive emergency psychiatric treatment. Per department policy, they placed Morgan in handcuffs. While in the parking lot, Morgan yelled loudly and struggled against the officers despite their requests that he stop. He fought their attempts to place him in the police cruiser by kicking and spitting. The officers called in a larger police car and attempted to restrain Morgan on a gurney. Morgan continued to struggle and eventually broke free of the gurney. At this point, the officers decided to take Morgan to jail for disorderly conduct rather than transport him to a hospital. The officers called in a prison transport van, which took Morgan to jail.

{¶4} Morgan was charged with disorderly conduct, a fourth-degree misdemeanor, and resisting arrest, a second-degree misdemeanor.[1] During the bench

[1] Morgan was also charged with assault on a law enforcement officer, though he was never indicted.

trial on February 11, 2026, Officer Koch-Hutchinson was the sole witness. The State also played the 30 minutes of body-worn-camera footage showing Morgan being escorted by officers from the lobby of the District 3 building to the parking lot where he was eventually loaded into the prison transport van. On March 10, 2026, the trial court found Morgan guilty of disorderly conduct and resisting arrest. Morgan now appeals.

II. Analysis

{¶5} On appeal, Morgan's sole assignment of error is that the trial court erred in finding him guilty of disorderly conduct and resisting arrest. Morgan argues that his convictions were supported by insufficient evidence and were against the manifest weight of the evidence.

{¶6} "A sufficiency-of-the-evidence argument challenges the adequacy of the evidence on each element of the offense." *State v. Staley*, 2021-Ohio-3086, ¶ 9 (1st Dist.). An appellate court must determine "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 (1991), paragraph two of the syllabus.

{¶7} "A manifest-weight-of-the-evidence argument challenges the believability of the evidence." *Staley* at ¶ 10. While giving some deference to the fact finder's credibility determinations, *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 3, an appellate court independently reviews the entire record and weighs the evidence to determine if the fact finder clearly lost its way and created a manifest miscarriage of justice. *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). This occurs "only in the exceptional case in which the evidence weighs heavily against conviction." *Id.*

{¶8} In his sole assignment of error, Morgan raises three issues. The first relates to his conviction for disorderly conduct. Morgan argues that he could not be guilty of disorderly conduct because he did not use fighting words. The second and third issues relate to Morgan's conviction for resisting arrest. For the second issue, Morgan argues that he could not be guilty of resisting arrest because there had been no lawful arrest. For the third issue, Morgan argues that he could not be guilty of resisting arrest because he did not know that he was being arrested.

A. Disorderly-Conduct Conviction

{¶9} Morgan was convicted of disorderly conduct in violation of R.C. 2917.11(A)(2). Under this statute, "[n]o person shall recklessly cause inconvenience, annoyance, or alarm to another by . . . [m]aking unreasonable noise or an offensively course utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person." Though disorderly conduct can be a minor misdemeanor, Morgan was charged with and convicted of a fourth-degree misdemeanor because he persisted in the conduct after reasonable warning or request to desist. *See* R.C. 2917.11(E)(3)(a).

{¶10} Morgan argues that his conviction was based upon insufficient evidence and was against the manifest weight of the evidence because the State failed to prove the necessary element that his language amounted to fighting words. Rather, Morgan alleges that his language was mere profanity, which is protected under the First Amendment, applicable to the states through the Fourteenth Amendment.

{¶11} The use of profane language does not constitute disorderly conduct unless the words used are fighting words. *Cincinnati v. Karlan*, 39 Ohio St.2d 107, 110 (1974) ("[N]o matter how rude, abusive, offensive, derisive, vulgar, insulting, crude, profane or opprobrious spoken words may seem to be, their utterance may not be

made a crime unless they are fighting words."). Words amount to fighting words, and thus their speaker may be punished for violating R.C. 2917.11(A)(2), if "the words spoken are likely, by their very utterance, to inflict injury or provoke the average person to an immediate retaliatory breach of the peace." *State v. Hoffman*, 57 Ohio St.2d 129, 133 (1979).

{¶12} Morgan's argument that the State failed to prove that his language constitutes fighting words ignores the portion of R.C. 2917.11(A)(2) that prohibits a person from making unreasonable noise. "Where a charge of disorderly conduct is not based on the content of the speech involved but only the manner of how the words are spoken, the fighting words requirement does not apply." *State v. Cunningham*, 2006-Ohio-6373, ¶ 22 (10th Dist.).

{¶13} Here, the State was not required to prove that Morgan's words constituted fighting words because the disorderly-conduct charge centered around the volume of Morgan's language, not its content. Officer Koch-Hutchinson testified that Morgan was "scream[ing] at the top of his lungs." Though the officer struggled to remember specifically what Morgan was saying, he testified that he was being very loud, and that he continued to yell loudly after being asked to stop. The body-worn-camera footage supports this testimony.

{¶14} Viewing the evidence in the light most favorable to the prosecution, we hold that the State put forth sufficient evidence that the volume of Morgan's words constituted unreasonable noise, regardless of whether they amounted to fighting words. In addition, viewing the record independently, we cannot say that the trial court clearly lost its way in convicting Morgan of disorderly conduct. This case is not one of those exceptional cases in which the evidence weighs heavily against conviction. Thus, we reject Morgan's manifest-weight-of-the-evidence argument and affirm

Morgan's conviction on the disorderly-conduct charge.

B. Resisting-Arrest Conviction

{¶15} Morgan was convicted of resisting arrest in violation of R.C. 2921.33(A). Under this statute, "[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another."

{¶16} As an element of the offense, the State must prove beyond a reasonable doubt that there was a lawful arrest for the defendant to resist against. *State v. Pitts*, 2022-Ohio-4172, ¶ 13 (1st Dist.). Morgan argues that his conviction was supported by insufficient evidence and was against the manifest weight of the evidence because the State did not prove that he was subject to arrest. Rather, Morgan argues that the State's evidence proves only that he was in police custody under R.C. 5122.10, which permits police to transport a person for emergency medical treatment. This statute explicitly provides that, "the custody-taking is not a criminal arrest." R.C. 5122.10(C).

{¶17} While police initially detained Morgan with the intention, not to arrest him, but to take him to the hospital for treatment, Officer Koch-Hutchinson testified that the encounter soon transformed into an arrest for disorderly conduct. As we stated in the previous section, the evidence supports Morgan's conviction for disorderly conduct because he was making unreasonable noise despite the officer's requests that he stop. This fourth-degree misdemeanor then satisfies the arrest element of resisting arrest. *See State v. Dowell*, 2025-Ohio-2425, ¶ 11-12 (1st Dist.) (holding that the noncriminal custody of R.C. 5122.10 can transform into a criminal arrest if the defendant commits a criminal offense).

{¶18} Viewing the evidence in the light most favorable to the prosecution, we hold that the State's evidence was sufficient to prove that Morgan was subject to a criminal arrest. Additionally, viewing the record independently, we once again cannot

say that the fact finder lost its way regarding this issue.

{¶19} A conviction under R.C. 2921.33(A) also requires that "the evidence must show that the defendant should have reasonably understood that she was being detained." *In re M.H.*, 2021-Ohio-1041, ¶ 27 (1st Dist.). Morgan argues that the evidence shows that his thinking was altered and that he could not have understood that he was under arrest. He also points to Officer Koch-Hutchinson's testimony that no one told Morgan that he was under arrest.

{¶20} A defendant may still understand that he was under arrest even if an officer never told him so explicitly. *State v. Chambers*, 2025-Ohio-4737, ¶ 58-60 (1st Dist.). In circumstances where the defendant was not told that he was under arrest, an appellate court looks to the surrounding circumstances to determine if the defendant should have known that he was being arrested. This includes whether the police subdued the defendant and placed him in handcuffs. *Id.*

{¶21} Viewing the evidence in the light most favorable to the prosecution, including drawing any inferences in its favor, we hold that the evidence is sufficient to support the fact finder's conclusion that Morgan should have known he was under arrest. The evidence established that Morgan was placed in handcuffs, restrained on a gurney, surrounded and subdued by at least ten uniformed officers, and loaded into three different police vehicles. From these facts, a fact finder could reasonably infer that Morgan should have known he was under arrest, even though he was never told that directly. Furthermore, viewing the record independently, we cannot say that the trial court clearly lost its way in convicting Morgan of this crime.

{¶22} While Morgan argues that his statements calling the police officers "fake ass cops" and "child molesters" shows that he did not understand that he was being arrested by genuine police officers, Morgan did not raise a defense at trial that he was

not guilty of the charge by reason of insanity. For that reason, Morgan's argument that he did not actually understand that he was being arrested fails on appeal. The State was merely required to prove that the defendant should have understood that he was being arrested, regardless of whether he actually did. The State met that burden through its evidence that Morgan was placed in handcuffs, restrained on a gurney, loaded into three different police vehicles, and surrounded by more than ten uniformed police officers. As a result, we affirm Morgan's resisting-arrest conviction.

{¶23} For the foregoing reasons, we overrule Morgan's sole assignment of error.

III. Conclusion

{¶24} Morgan's disorderly-conduct conviction was supported by sufficient evidence and was not against the manifest weight of the evidence because the State's evidence established that Morgan's language constituted unreasonable noise. Morgan's resisting-arrest conviction was also supported by sufficient evidence and was not against the manifest weight of the evidence because the State's evidence demonstrated that Morgan was under arrest for disorderly conduct, a fourth-degree misdemeanor, and that he should have reasonably known that he was being arrested. As a result, we overrule Morgan's sole assignment of error and affirm the judgments of the trial court.

Judgments affirmed.

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