

**IN THE COURT OF APPEALS OF OHIO  
ELEVENTH APPELLATE DISTRICT  
ASHTABULA COUNTY**

CITY OF CONNEAUT,

Plaintiff-Appellee,

- v -

JAMES W. EMUS,

Defendant-Appellant.

CASE NOS. 2022-A-0021  
2022-A-0023  
2022-A-0025  
2022-A-0027

Criminal Appeals from the  
Conneaut Municipal Court

Trial Court Nos. 2021 CRB 00290 A  
2021 TRD 00490  
2021 CRB 00290 B  
2021 TRD 00490 B

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**OPINION**

Decided: February 21, 2023  
Judgment: Affirmed

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*John D. Lewis*, Law Director, City of Conneaut, 294 Main Street, Conneaut, OH 44030  
(For Plaintiff-Appellee).

*Sean P. Martin*, 113 North Chestnut Street, Suite A, Jefferson, OH 44047 (For  
Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, James E. Emus (“Mr. Emus”), appeals from the judgments of the Conneaut Municipal Court, which sentenced him to three consecutive 30-day jail sentences, with 26 days suspended and 18 months of community control, after a jury found him guilty of aggravated disorderly conduct, access roads to trails, and refusal to disclose personal information in a public place. Mr. Emus’ convictions stemmed from an

uncooperative traffic stop, which was initiated after an officer observed him riding his all-terrain vehicle (“ATV”) on city streets in Conneaut, Ohio.

{¶2} Mr. Emus raises two assignments of error on appeal, contending that his conviction for aggravated disorderly conduct is based on insufficient evidence and against the manifest weight of the evidence. More specifically, Mr. Emus contends the City of Conneaut (the “city”) only introduced evidence by way of the testimony of the officers present at the scene that he was “turbulent, vulgar, and offensive” and that there were people standing on their porches across the street. He asserts his language, without more, was within the confines of protected speech under the First Amendment to the United States Constitution. Thus, the evidence was insufficient to sustain a conviction for aggravated disorderly conduct. He similarly argues that the manifest weight of the evidence does not support the jury’s verdict.

{¶3} After a careful review of the record and pertinent law, we find Mr. Emus’ assignments of error to be without merit. The city introduced the testimony of the officers at the scene as well as their body cam videos, which established that in addition to Mr. Emus’ offensive and turbulent demeanor, he remained uncooperative throughout the entirety of the traffic stop, even though his compliance was continually requested, and that his behavior inconvenienced the officers while they were trying to perform their duties. This is more than sufficient evidence from which a jury could find Mr. Emus guilty of aggravated disorderly conduct. Most fundamentally, Mr. Emus’ argument that his speech was protected under the First Amendment is misplaced since he was not charged under the prohibited speech and expression portion of Conneaut Ordinance 509.03 (which mirrors R.C. 2917.11). Rather, he was charged under Conneaut Ordinance

509.03(a)(1), which prohibits certain behavior, i.e., tumultuous behavior or unruly conduct characterized by violent disturbance or commotion.

{¶4} The judgments of the Conneaut Municipal Court are affirmed.

### **Substantive and Procedural History**

{¶5} On August 31, 2021, Mr. Emus was issued a citation by the City of Conneaut Police for driving his ATV on a public roadway. He refused to disclose any identification for his person or his ATV to the officers. Mr. Emus was charged with access roads to trails, a fourth-degree misdemeanor, in violation of Conneaut Ordinance 375.04; low speed vehicle, an unclassified offense, in violation of Conneaut Ordinance 343.01 (which was dismissed); refusal to disclose personal information in public place, a fourth-degree misdemeanor, in violation of Conneaut Ordinance 525.17(a)(1); and aggravated disorderly conduct, a fourth-degree misdemeanor, in violation of Conneaut Ordinance 509.03(a)(1) and (e)(3)(A).

{¶6} Mr. Emus entered pleas of not guilty at his arraignment, and the case proceeded to a one-day jury trial.

{¶7} The state presented the testimony of the City of Conneaut Police Officers present at the scene, Deputy Daric Wise (“Dep. Wise”) and Sergeant Michael T. Sullivan (“Sgt. Sullivan”), as well as video footage of the stop from their body cameras.

{¶8} Dep. Wise testified that he initiated a traffic stop upon observing Mr. Emus driving his ATV on Madison Street in the city of Conneaut. Mr. Emus pulled into a parking lot behind the First Baptist Church. When asked for his driver’s license, registration, and proof of insurance, Mr. Emus refused to provide the identification, told the deputy that he was a “traveler” and inquired as to why he was pulled over. Dep. Wise explained for the

jury that a traveler is a person walking on foot or horseback. Mr. Emus then inquired as to why Dep. Wise had the emergency lights activated on his police cruiser, and he asked for Dep. Wise's name and badge number. Dep. Wise requested a supervisor come to the scene due to Mr. Emus' agitated and confrontational nature. Mr. Emus informed him that he had just visited the chief of police, who had given him the city ordinance for access to trails. He refused to give Dep. Wise his identification. Dep. Wise detained Mr. Emus with handcuffs until he could be identified. Dep. Wise described Mr. Emus' demeanor as vulgar, offensive, and turbulent. Dep. Wise testified that both Mr. Emus' conduct and refusal to provide identification were arrestable offenses.

{¶9} Dep. Wise was able to obtain Mr. Emus' information from dispatch, which also advised that Mr. Emus had a concealed carry weapon permit ("CCW"). Mr. Emus confirmed that he was not carrying a weapon. After Mr. Emus was identified, Dep. Wise released him from the handcuffs. Mr. Emus requested the officers call Emus Towing to pick up his ATV since he could not drive it on the roadways. Dep. Wise issued Mr. Emus a citation for operating the ATV on a public roadway and low speed. When handed the traffic citation, Mr. Emus refused to take it, sign it, and/or provide his phone number. Dep. Wise taped the citation to the handlebars of Mr. Emus' ATV.

{¶10} Sgt. Sullivan gave a similar account of the traffic stop. He described Mr. Emus' demeanor as argumentative and turbulent and stated there were people standing on their porches observing the incident.

{¶11} Sgt. Sullivan had encountered Mr. Emus at the police station shortly before the traffic stop. Mr. Emus was in the lobby, demanding to speak to the chief of police, who had given him a warning for driving his ATV on a public roadway on an earlier

occasion. Sgt. Sullivan described Mr. Emus' demeanor as mean, "getting nasty," and argumentative. Mr. Emus demanded Sgt. Sullivan's badge number, name, and a pen and began explaining why he can drive his ATV on public roadways. Sgt. Sullivan told Mr. Emus that he could be cited for disorderly conduct if he did not calm down. The chief of police arrived, and while talking to Mr. Emus, gave him a copy of the ordinance for "Access Roads to Trail." Dispatch observed Mr. Emus driving his ATV out of the station parking lot and onto the public roadway. Sgt. Sullivan contacted Dep. Wise and informed him that if he observed Mr. Emus driving on the roadway, he could stop him because it was just explained to him that he was not allowed on the roadways with the ATV.

{¶12} The jury returned guilty verdicts on all three counts, and the matter was set for a sentencing hearing. Approximately one week later, the trial court sentenced Mr. Emus to a 30-day jail term with 26 days suspended and 18-months of community control for each count, to be served consecutively to one another, as well as a fine and court costs. As part of his community control conditions, the trial court ordered Mr. Emus to submit to a comprehensive diagnostic assessment for anger management and mental health purposes and to write letters of apology to the City of Conneaut officers as well as the chief of police.

{¶13} Mr. Emus raises two assignments of error on appeal:

{¶14} "[1.] Appellant's conviction was based on insufficient evidence.

{¶15} "[2.] Appellant's conviction fell against the manifest weight of the evidence."

### **Sufficiency of the Evidence**

{¶16} In his first assignment of error, Mr. Emus contends the city failed to produce legally sufficient evidence to sustain a conviction for aggravated disorderly conduct. More

specifically, Mr. Emus contends the city only introduced evidence by way of the testimony of the officers present at the scene that he was “turbulent, vulgar, and offensive” and that there were people standing on their porches across the street. He argues that his language, without more, fell within the confines of protected speech under the First Amendment to the United States Constitution.

{¶17} Crim.R. 29(A) requires the trial court to grant a motion for judgment of acquittal if the evidence is insufficient to sustain a conviction on the charged offense(s). “Thus, when an appellant makes a Crim.R. 29 motion, he or she is challenging the sufficiency of the evidence introduced by the state.” *State v. Patrick*, 11th Dist. Trumbull Nos. 2003-T-0166 & 2003-T-0167, 2004-Ohio-6688, ¶ 18.

{¶18} When reviewing whether sufficient evidence was presented to sustain a conviction, “[t]he 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, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Thus, a claim of insufficient evidence invokes a question of due process, the resolution of which does not allow for a weighing of the evidence. *State v. Schlee*, 11th Dist. Lake No. 93-L-082, 1994 WL 738452, \*4 (Dec. 23, 1994).

{¶19} Mr. Emus was convicted of aggravated disorderly conduct in violation of Conneaut Ordinance 509.03, which provides:

{¶20} “(a) No person shall recklessly cause inconvenience, annoyance or alarm to another by doing any of the following:

{¶21} “(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

{¶22} “\* \* \*

{¶23} “(e) \* \* \*

{¶24} “(3) Disorderly conduct is a misdemeanor of the fourth degree if \* \* \*:

{¶25} “A. The offender persists in disorderly conduct after a reasonable warning or request to desist.” See *also* R.C. 2917.11(A)(1) and (E)(3)(a).

{¶26} “A person acts recklessly when, with heedless indifference to the consequences, the person perversely disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a certain result or is likely to be of a certain nature.” Conneaut Ordinance 501.08(c); see *also* R.C. 2901.22(C).

{¶27} As our review of the evidence at trial revealed, there was more than sufficient evidence that Mr. Emus threatened harm and displayed violent and turbulent behavior. The officers’ body cam videos depicted Mr. Emus refusing to cooperate, being detained with handcuffs after refusing to identify himself, refusing to take the traffic citation, and threatening and insulting the officers with profane and vulgar language. Mr. Emus questioned the officers if they had children and threatened the officers’ employment. Both officers testified that he appeared “agitated” and “confrontational.” Further, he persisted in this behavior for the length of the traffic stop, initially, as per Sgt. Sullivan’s testimony, in front of people who had gathered on their porches across the street. Indeed, both officers testified that Mr. Emus’ behavior, i.e., aggravated disorderly conduct, and refusal to identify himself were arrestable offenses. If believed, the

aforementioned testimony and evidence were sufficient to support the jury's guilty verdict for aggravated disorderly conduct.

{¶28} Mr. Emus is mistaken that his offensive language constitutes “protected speech” under the First Amendment to the United States Constitution. As the Supreme Court of Ohio explained in *State v. Reeder*, 18 Ohio St.3d 25, 479 N.E.2d 280 (1985), in its determination that the term “turbulent” is not unconstitutionally vague in the mirror statute to Conneaut Ordinance 509.03, R.C. 2917.11(A)(1): “[T]his case does not concern the prohibited speech-and-expression portion of the statute contained in subdivision (A)(2) \* \* \*. Rather, [R.C. 2917.11(A)(1)] prohibits certain behavior \* \* \*.” *Id.* at 26.

{¶29} ““Turbulent behavior” as stated in [R.C. 2917.11](A)(1) refers to “tumultuous behavior or unruly conduct characterized by violent disturbance or commotion.”” *State v. Street*, 2d Dist. Montgomery No. 26501, 2015-Ohio-2789, ¶ 25, quoting *State v. Heffner*, 2d Dist. Montgomery No. 16230, 1997 WL 309368, \*3 (June 6, 1997), quoting *Reeder* at 27. “[A] verbal berating of another individual may constitute turbulent behavior that causes inconvenience, annoyance, or alarm without regard to the content of that speech and that, under such circumstances, the verbal conduct may result in a conviction for disorderly conduct even if it does not provoke injury or a breach of the peace.” *Id.*, quoting *State v. Jackson*, 2d Dist. Montgomery No. 17128, 1998 WL 801367, \*4 (Nov. 20, 1998). *See also State v. Walker*, 5th Dist. Stark No. 2013 CA 00204, 2014-Ohio 3693, ¶ 23 (A prosecution under R.C. 2917.11(A)(1) contains a component which does not concern the prohibition of speech or expression. This section, rather, contains elements prohibiting behavior).

{¶30} Moreover, threatening speech or conduct is not protected under the First Amendment. *Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22L.Ed.2d 664 (1969). The threat must be real and not merely conditional. *Id.* at 708.

{¶31} In sum, the officers' testimony and the body cam videos established that, in addition to his offensive and turbulent demeanor, Mr. Emus remained uncooperative throughout the entirety of the traffic stop, even though his compliance was continually requested, and that his behavior inconvenienced the officers while they were trying to perform their duties. *See Street* at ¶ 26. This is more than sufficient evidence from which a jury could find Mr. Emus guilty of aggravated disorderly conduct.

{¶32} Mr. Emus' first assignment of error is without merit.

#### **Manifest Weight of the Evidence**

{¶33} In his second assignment of error, Mr. Emus similarly contends that his conviction for aggravated disorderly conduct is against the manifest weight of the evidence because his argumentative nature and use of profanity was "protected speech" under the First Amendment to the United States Constitution.

{¶34} As we noted in finding the city introduced sufficient evidence to support a conviction for aggravated disorderly conduct, Mr. Emus was charged under Conneaut Ordinance 509.03(a)(1), which deals with prohibited behavior and does not implicate a First Amendment "protected speech" analysis. *See Reeder* at 26.

{¶35} Further, it is clear the jury believed the evidence presented by the city, as it was free to do. Although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must give great deference to the factfinder's determination of the witnesses' credibility. *Lyndhurst*

*v. Smith*, 8th Dist. Cuyahoga No. 101019, 2015-Ohio-2512, ¶ 64. Further, the trier of fact is free to believe or disbelieve all or any of a witness' testimony. *Id.*

{¶36} Accordingly, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

{¶37} Mr. Emus' second assignment of error is without merit.

{¶38} The judgments of the Conneaut Municipal Court are affirmed.

JOHN J. EKLUND, P.J.,

MATT LYNCH, J.,

concur.