[Cite as *State v. Holley*, 2026-Ohio-4349.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

STATE OF OHIO Plaintiff - Appellee -vs- DONALD HOLLEY Defendant - Appellant	Case No. 2025CA00169 Opinion and Judgment Entry Appeal from the Stark County Court of Common Pleas, Case No. 2025CR0647 Judgment: Affirmed Date of Judgment Entry: October 30, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: Kyle L. Stone, Prosecuting Attorney, Stark County, Ohio, Kameisha J. Johnson, Assistant Prosecuting Attorney, for Plaintiff-Appellee; Donovan R. Hill, for Defendant-Appellant.

Hoffman, P.J.

{¶1} Defendant-appellant Donald Holley appeals the November 5, 2025 judgment entered by the Stark County Common Pleas Court finding him guilty on one count of Theft from a Person in a Protected Class following a jury trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On April 29, 2025, the Stark County Grand Jury indicted Appellant Donald Holley on one count of Theft from a Person in a Protected Class, in violation of R.C. §2913.02(A)(l)/(A)(2)/(A)(3)(B)(3).

{¶3} The charge stems from a series of ATM withdrawals made by Appellant from the bank account of the victim, C.R., beginning in May 2024. C.R. is an elderly man who resides in a nursing care facility and has no family, spouse, or surviving relatives. (T. at 152, 195, 256). According to Dr. Brian McClain's medical report, C.R. was diagnosed with a mental impairment and the court determined he was unable to care for himself or his property, necessitating the appointment of a guardian.

{¶4} On May 20, 2025, Appellant entered a written plea of not guilty.

{¶5} On November 5, 2025, a jury trial commenced, with the jury receiving the following testimony and evidence:

{¶6} Attorney Spencer Geraghty testified he was appointed by the probate court to be the guardian of C.R.'s estate in July 2024. (T. at 111-112, 118). Atty. Geraghty testified he obtained C.R.'s bank records to review expenditures. (T. at 112-113). Atty. Geraghty made an appointment with a bank manager at Key Bank, which held C.R.'s financial records, and obtained his bank statements. (T. at 113). Atty. Geraghty testified:

> When I looked at [the bank statements], I believe the bank statements went back to 2021. I noticed significant expenditures occurring in the form of ATM withdrawals, what appeared to be the maximum daily limit of approximately $300 or so for that ATM withdrawal, and that was happening day after day after day, for - - throughout every bank statement that I observed.

{¶7} (T. at 114).

{¶8} Atty. Geraghty stated he spoke with a Key Bank manager, who informed him Appellant Donald Holley was listed on C.R.'s account as power of attorney. (T. at 114). Atty. Geraghty explained a power of attorney allows another party to act on an individual's behalf but unlike a guardianship, it is not court ordered. (T. at 114). Atty. Geraghty testified on re-direct regarding duties of a power of attorney:

> [T]he number one duty overall is powers of attorney are prohibited from self-dealing. And self-dealing is acting in any way that's contrary to the interest of the person authorizing the power of attorney; in other words, the person that's holding the power of attorney that's acting on the other's behalf cannot act in their own interest in any time in any way. It only is to act in the interest of the individual granting that power of attorney.

{¶9} (T. at 121).

{¶10} Atty. Geraghty further explained powers of attorney cannot use the money for their own personal gain and must keep accurate records. (T. at 121-22).

{¶11} Atty. Geraghty obtained Appellant Holley's contact information and reached out to him via phone to address the discrepancies, particularly concerning the funds being withdrawn from the account. (T. at 115). Appellant told Geraghty that years earlier, someone posing as an FBI agent visited the victim's house and told him he was under investigation for fraud. *Id.* Appellant claimed this individual told the victim he needed his bank details so he could visit the bank and resolve the fraud allegations. *Id.* Atty. Geraghty testified this was Appellant's account of what he claimed happened to the money. (T. at 115-116). After

speaking to Appellant, he froze all the funds in the account and closed it. (T. at 117). He did not attempt to speak with the victim concerning the funds missing from his account because he was incapacitated and unable to remember relevant details due to his medical condition. (T. at 116).

{¶12} Atty. Geraghty testified he next discussed the issue with an FBI agent, who advised him to contact local law enforcement. (T. at 116). He then contacted Detective Seth Busche at the Alliance Police Department and explained what he had discovered. *Id.* He provided Det. Busche with the victim's Key Bank records. (T. at 117). He explained the victim was in a nursing care facility and unable to act on his own behalf, so there was no logical way he was the person making the withdrawals. *Id.* Atty. Geraghty had no further involvement in the case.

{¶13} Deborah Banal testified she is a volunteer guardian who was appointed by the Stark County Probate Court. She stated she first met the victim in March 2024, when he was a resident at Meadow Wind Nursing Home in Massillon. (T. at 138-139). As his guardian, she was responsible for overseeing his well-being, ensuring he received the necessary medical care, food and clothing, and keeping his room at the facility tidy. (T. at 136).

{¶14} Ms. Banal visited the victim weekly to care for him, but he never remembered her name. (T. at 139-140). She recalled he mentioned his friend Holley, but his recollection of the past was limited. (T. at 139). She purchased clothing, books, and music for him and delivered them to the facility. *Id.* She never observed anyone else bringing the victim any items nor did she ever notice anything new in his room. (T. at 141, 148- 149). Additionally, she never saw him have any other visitors during her visits. (T. at 141). Although the victim claimed Holley had taken him to the park, the nursing staff confirmed he had never left the

facility. (T. at 142). Based on her experience, she stated she often noticed wards imagining similar scenarios. (T. at 142-143). She ceased acting as his guardian after he was transferred to McCrea Manor, a secure facility for patients with dementia or Alzheimer's. (T. at 142).

{¶15} Juanita Chapman testified she works with Guardian Support Services and served as the victim's court appointed legal guardian while he was at the McCrea Manor facility, after her appointment in September 2024. She explained she was required to visit him at least once a month, but she tried to visit more often. (T. at 154). She recalled during each visit he was friendly, but he did not know her name, and she was not sure if he remembered she was his guardian. *Id.* She explained the victim only left the facility for medical appointments, and she never observed him having any other visitors. (T. at 155). According to Ms. Chapman, the victim had either Alzheimer's or dementia, and his memory recall is impaired. (T. at 158-159).

{¶16} Detective Seth Busche testified he works at the City of Alliance Police Department in the Detective Bureau's Criminal Investigative Unit, which handles investigations of crimes such as fraud. (T. at 164). He testified Atty. Geraghty visited the department and made a report concerning the victim's case. (T. at 165). Atty. Geraghty reported to him the victim resided at the McCrea Manor care facility, and he had reviewed the victim's financial records and had identified several issues. *Id.* Det. Busche obtained all the necessary information from Atty. Geraghty, who also provided him with the name Donald Holley. (T. at 166). Det. Busche contacted Appellant Holley by telephone to find out if he knew what happened to the money. (T. at 166-167). Appellant told him he and the victim were friends and had known each other for a long time. (T. at 167). He also mentioned they lived together at one point. *Id.* Appellant claimed he was assigned to assist the victim with

managing his finances about four or five years ago but no longer performed that duty and no longer had access to the victim's bank account, including his debit card. *Id.* Appellant then told him someone visited the victim's home about four or five years ago, stole his debit card and PIN, and the card was never recovered. (T. at 167-168). Det. Busche testified he had three separate discussions with Appellant. (T. at 188). Appellant explained he was granted access to the victim's debit card approximately four or five years earlier, because of his POA status, but he relinquished the POA a few months after the victim entered a rehab facility. *Id.* Det. Busche further testified Appellant's claim about someone taking the victim's debit card was ultimately false. (T. at 193).

{¶17} Det. Busche examined the victim's KeyBank records and observed daily $300 ATM withdrawals, with some days indicating multiple withdrawals. (T. at 168-169). After reviewing the records, he obtained a subpoena for the ATM camera footage for the relevant period. (T. at 173). He believed it was necessary to investigate the ATM withdrawals since the victim was in a nursing home and never left the facility. *Id.* Furthermore, based on the information he received from Appellant, he began searching for a potential suspect. *Id.* Det. Busche collected a total of 36 videos from the ATM camera footage. (T. at 174). After reviewing all the videos, he observed Appellant was the individual making the withdrawals at the ATMs. (T. at 174). Det. Busche identified a video showing Appellant pulling up to the ATM, withdrawing money, and then driving away. (T. at 174). Det. Busche further testified most of the withdrawals took place at Cleveland or North Canton bank branches. (T. at 169). He identified the following withdrawals from the victim's account: May 2024: twelve withdrawals of $300 each, totaling $3,600; June 2024: ten withdrawals of $300 each, totaling $3,000; July 2024: thirteen withdrawals of $300 each, totaling $3,900; August 2024: twelve

withdrawals of $300 each, totaling $3,600; September 2024: nine $300 withdrawals and one $200 withdrawal, totaling $2,900; October 2024: twelve withdrawals of $300 each, totaling $3,600. (T. at 170-172). Notably, the records showed each month the victim received a direct deposit of $4,872.86, which included his retirement benefits and Social Security. With the exception of health care premiums and pre-authorized expenses, nearly the entirety of the victim's money was withdrawn by Appellant. The missing funds were estimated to be around $23,000. (T. at 176). The account summaries revealed Appellant withdrew the victim's funds immediately after his direct deposits were made, and these withdrawals continued throughout the month. (T. at 170).

{¶18} After discovering Appellant was the person withdrawing the money, Det. Busche left him a message saying they needed to talk. (T. at 175). Approximately one month later, Appellant returned the call and said he was coming into the police station to speak with him. *Id.*

{¶19} Upon arrival, Appellant was escorted to the interview room, where his interview was recorded. (T. at 175). Appellant started the interview by telling Det. Busche, "You said you had photos, yeah, I don't doubt those." *(State's Ex. 3; recorded interview with Appellant).* Appellant said the victim's memory was poor and he was his POA at some point, but claimed he relinquished the POA. *Id.* He admitted, "I obviously made some bad choices in terms of accessing his bank account, and here I am." He further stated, "I know I'm a good person, but there were bad choices." He added sometimes when he visited the victim, the victim thought they were brothers. *Id.* Appellant then again stated, "But I made some bad decisions." *Id.*

{¶20} Appellant explained he suffered from major depression and anxiety but pointedly stated he was not using his disorders as an excuse for his actions. *Id.* Det. Busche advised him he would be charged for taking the money, and Appellant responded, "Ok ... that's fine." *Id.* Det. Busche inquired why he withdrew $300 each time, and Appellant explained it was due to the transaction limit. Det. Busche further asked whether he checked the victim's account balance to verify whether a specific amount was available, to which he responded, "I generally knew what his funds were" and added he knew the victim was receiving approximately $3,000 per month. Id. Det. Busche also asked whether the money helped him [Appellant] to pay for his food and bills, and Appellant responded, "It did, plus I have a gambling addiction." He further admitted he was trying to deal with his gambling problem. *Id.* He told Det. Busche he used to gamble at the JACK Casino in Cleveland, but he had been going to the MGM Casino. *Id.* He further told Det. Busche he had been gambling for the past 3 years. *Id.* Det. Busche testified where Appellant gambled was significant because some of the withdrawals were made from ATMs near the JACK Casino. (T. at 177).

{¶21} During the interview, Appellant told Det. Busche he is a teacher by profession, and he and the victim used to work in the same field. *Id.* He recalled the victim at one time received a $10,000 raise, to which Det. Busche responded, "Nice." Appellant then responded, "Nice, unless you have some asshole taking money from you," while pointing to himself. *Id.* Det. Busche inquired whether he still possessed the debit card for the account and Appellant replied, "I trashed it." *Id.* Appellant admitted he discarded the card around the time the account was frozen. *Id.* He admitted, "There's no doubt this is the dumbest thing I've ever done in my life." *Id.* He also stated, "I hope this doesn't affect my status with the school." Id.

According to Det. Busche, Appellant never showed any confusion during the interview and appeared remorseful for taking the money from the victim. (T. at 177-178).

{¶22} According to Det. Busche, Appellant was not forthcoming until he was confronted with the ATM footage. (T. at 188). Det. Busche identified Appellant Holley in court. (T. at 166).

{¶23} Det. Busche visited the McCrea Manor facility, but staff informed him the victim would not be able to understand anything communicated to him. (T. at 182).

{¶24} Appellant took the stand and testified he became the victim's power of attorney sometime in 2021, and the topic of the purported reimbursement was first discussed with the victim in 2019. (T. at 199, 205). Appellant stated he accompanied the victim to medical appointments, and during one of those appointments, the victim stated he should be compensated for transporting him. (T. at 200-201). He also testified the "agreement" reached was $20 per hour plus mileage, however he never documented the agreement and only kept a mental note of his trips. (T. at 202, 205). He testified he began reimbursing himself after the victim was involved in an accident. *Id*. He also testified he reimbursed himself for cleaning services he supposedly performed for the victim "way back in the day" and for furniture replacement, both of which, according to his testimony, occurred years before 2024. (T. at 199, 201-202, 210). He further testified he recalculated the amounts he claimed he was owed after being indicted. (T. at 211). He admitted he did not inform Atty. Geraghty about the alleged agreement he had with the victim. (T. at 218). Additionally, he recognized he had multiple opportunities to tell Atty. Geraghty and Det. Busche about the version of events he gave in court but did not do so. (T. at 219-220).

{¶25} The jury inquired why Appellant waited until the victim was mentally unable to object before reimbursing himself. (T. at 228). The jury also inquired why he waited until 2024, to take the money. (T. at 229).

{¶26} At the close of the State's case, and again at the close of the Appellant's case, counsel for Appellant made a Rule 29 Motion for Acquittal, which the trial court overruled.

{¶27} The jury found Appellant guilty of Theft from a Person in a Protected Class.

{¶28} A sentencing hearing immediately followed. The trial court sentenced Appellant to a definite sentence of thirty-six (36) months incarceration. The court also ordered restitution in the amount of twenty-three thousand ($23,000) dollars to the victim. (See Nov. 18, 2025 Judgment Entry).

{¶29} Appellant now appeals the November 18, 2025 judgment entry, assigning the following errors for review:

ASSIGNMENTS OF ERROR

I. APPELLANT'S CONVICTION WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE.

II. APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

I., II.

{¶30} Appellant's arguments in his two assignments of error are interrelated, so we shall address them simultaneously.

{¶31} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 1997-Ohio-52, paragraph two of the syllabus. Sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, while weight of the evidence addresses the evidence's effect of inducing belief. *Id.* A finding that a conviction is supported by the manifest weight of the evidence, however, necessarily includes a finding the conviction is supported by sufficient evidence and will therefore be dispositive of the issues of sufficiency of the evidence. *State v. McCrary*, 2011-Ohio-3161, ¶ 11 (10th Dist.).

{¶32} An appellate court's function when reviewing the sufficiency of the evidence is to 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, paragraph two of the syllabus (1991).

{¶33} The term "manifest weight of the evidence" relates to persuasion. *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 19. It concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." (Emphasis deleted.) *State v. Thompkins*, 1997-Ohio-52, superseded by constitutional amendment on other grounds as stated in *State v. Smith*, 1997-Ohio-355; *State v. Martin*, 2022-Ohio-4175, ¶ 26.

{¶34} In determining whether a judgment is against the manifest weight of the evidence, an appellate 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). Sitting as the

"thirteenth juror," the court of appeals considers whether the evidence should be believed and may overturn a verdict if it disagrees with the trier of fact's conclusion. *Id.*

{¶35} When conducting a manifest weight review, the question is whether the jury clearly lost its way in resolving conflicts, resulting in a manifest miscarriage of justice, even if the evidence is legally sufficient. *Thompkins*, 78 Ohio St.3d at 387; *State v. Issa*, 2001-Ohio-1290. Appellate courts have traditionally presumed the jury's assessment is correct, given its ability to observe witnesses' demeanor, gestures, and tone, all critical factors in evaluating credibility. *Eastley*, 2012-Ohio-2179, at ¶ 21; *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶36} A manifest-weight claim succeeds only in "the exceptional case in which the evidence weighs heavily against the conviction." (Internal quotations omitted.) *Thompkins*, 78 Ohio St.3d at 387. To reverse a conviction on manifest-weight grounds, all three judges on the appellate panel must concur. Ohio Const., Art. IV, § 3(B)(3); *Bryan-Wollman v. Domonko*, 2007-Ohio-4918, ¶¶ 2-4, citing *Thompkins*, syllabus ¶ 4.

{¶37} Appellant was convicted of Theft from a Person in a Protected Class, in violation of R.C. §2913.02, which provides in pertinent part:

> (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
>
> (1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

* * *

(B) (3) Except as otherwise provided in division (B)(4), (5), (6), (7), (8), or (9) of this section, if the victim of the offense is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, a violation of this section is theft from a person in a protected class, and division (B)(3) of this section applies. … If the value of the property or services stolen is seven thousand five hundred dollars or more and is less than thirty-seven thousand five hundred dollars, theft from a person in a protected class is a felony of the third degree. …

{¶38} A "disabled adult" is defined as:

A person who is eighteen years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least twelve months without any present indication of recovery from the impairment, or who is eighteen years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.

{¶39} R.C. §2913.01(DD).

{¶40} Appellant argues the State failed to prove he deceived the victim or lacked the victim's consent to use and/or take his money.

{¶41} Upon review, we find the State presented legally sufficient evidence to support the jury's verdict. Evidence was presented at trial establishing C.R. was an incapacitated person who required a court-appointed guardian to handle the affairs of his estate. (T. at 116). Testimony was also presented by two of his guardians describing C.R.'s cognitive impairment, his inability to recall their names or their roles as his guardian, and that he suffered from either dementia or Alzheimer's disease. (T. at 136, 139, 154).

{¶42} The evidence presented showed Appellant had taken over $23,000 of C.R.'s money through repeated ATM withdrawals. The testimony of Detective Busche documented the financial trail which established how Appellant made daily withdrawals of $300, beginning immediately after C.R.'s Social Security and retirement benefits were deposited in his account. Video evidence was presented establishing Appellant was the person making the ATM withdrawals.

{¶43} Appellant never denied taking the money. He did, however, change his story multiple times. Initially, he told Atty. Geraghty someone impersonating an FBI agent obtained the victim's bank details. (T. at 115). Appellant then told Det. Busche, during his recorded interview, someone visited the victim's home about four or five years ago and stole his debit card and PIN. (T. at 167-168). Appellant also told Det. Busche he had access to the victim's debit card four or five years ago because he was the victim's power of attorney but later relinquished the POA when the victim entered a rehab facility. (T. at 188). Then, in a

subsequent recorded interview, when confronted with the ATM surveillance videos, Appellant told Det. Busche he did not doubt the existence of the photos. Id. When asked if he still had the victim's debit card, he replied, "I trashed it" around the time the account was frozen. *Id*.

{¶44} Appellant admitted "I obviously made some bad choices accessing his [C.R.'s] bank account, and here I am." (T. at 175). He went on to say, "I know I'm a good person, but there were bad choices" and "I made some bad decisions." *Id.* Appellant volunteered to say he suffered from major depression and anxiety but explicitly made clear he was not using his disorders as an excuse for his actions. *Id.* Appellant also admitted he had a gambling addiction and some of the money was used to gamble at local casinos. *Id.* He even referred to himself as an "asshole" for taking the victim's money. *Id.* He also admitted, "There's no doubt this is the dumbest thing I've ever done in my life" and "I hope this doesn't affect my status with the school." *Id*.

{¶45} While Appellant argues the State failed to prove he did not have an agreement with the victim giving him permission to take the money, Appellant failed to mention the existence of any agreement with the victim giving him consent to withdraw the money to Atty. Geraghty or Detective Busche during any of their conversations. He also failed to provide any evidence of the existence of such an agreement. The evidence presented showed Appellant did not start taking the money until after the victim was incapacitated and was in a facility. Appellant also told Det. Bushe he had relinquished his role as power of attorney for the victim years earlier. (T. at 188).

{¶46} It is axiomatic that the trier of fact is the final arbiter of witness credibility. The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison*, 49 Ohio St.3d 182 (1990). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 1997-Ohio-260.

{¶47} The jury heard the testimony of the witnesses and viewed all the evidence, deliberated, and found Appellant guilty of the charge of theft from a person in a protected class. We cannot say the jury clearly lost its way and created such a manifest miscarriage of justice that Appellant's conviction must be reversed and a new trial ordered.

{¶48} Appellant's first and second assignments of error are overruled.

{¶49} The judgment of the Stark County Court of Common Pleas is affirmed.

{¶50} Costs to Appellant.

By: Hoffman, P.J.

Montgomery, J. and

Gormley, J. concur.