

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. L-25-00307

Appellee

Trial Court No. CRB02506610

v.

Albert McCluster

DECISION AND JUDGMENT

Appellant

Decided: October 16, 2026

* * * * *

Rebecca Facey, Chief Prosecutor, and
Jimmie Jones, Assistant Prosecutor, for appellee.

Laurel A. Kendall, for appellant.

* * * * *

MAYLE, J.

{¶ 1} Following a bench trial, defendant-appellant, Albert McCluster, appeals the December 19, 2026 Sentencing Entry of the Toledo Municipal Court, convicting him of violating Toledo Municipal Code (TMC) 505.09(a)—which criminalizes dogs “running at large.” For the following reasons, we affirm.

I. Background

{¶ 2} On August 2, 2025, McCluster was walking his two dogs, Baby and Ghost, without leashes near the corner of Summit and Jackson in Downtown Toledo, during the Annual Toledo Jeep Fest. At the same time, Toledo Police Department (TPD) Officers Muehlbauer, Pieron, and an unnamed officer were talking to a family with a small dog on a leash.

{¶ 3} Shortly after the family walked away from the officers, Ghost—a four-year-old Dogo Argentino—charged the smaller dog. There were no injuries and McCluster was able to regain hold of Ghost within a matter of seconds.

{¶ 4} The incident was observed by the three TPD officers. The family of the other dog left the scene shortly after the separation of the dogs without talking to the police. Nevertheless, the officers confronted McCluster about putting a leash on his dogs and issued him a warning. A lengthy dispute then ensued between McCluster and the officers that ended with the officers permitting McCluster to leave with his dogs while telling him that he would receive a citation in the mail.

{¶ 5} On August 3, 2025, McCluster was summoned to appear for arraignment for a charge of “Dogs or cats running at large; a nuisance,” a misdemeanor of the fourth degree, in violation of TMC 505.09(a), which states:

No owner or keeper of any dog or cat shall permit such dog or cat to run at large, or allow any such dog or cat off the premises of the owner or keeper, unless such dog or cat is restrained by a substantial leash or harness or otherwise under the direct and constant supervision or control of the owner or handler. Any dog or cat within the limits of the City that is restricted upon the premises of the owner or keeper must be so restricted by means of a secured fastening or suitable enclosure. No leash shall be required when

dogs and cats are permitted to exercise along streams and/or in parks, provided permits therefor have been obtained from the property owners or the Commissioner of Parks and Recreation.

{¶ 6} The case proceeded to a bench trial in the Toledo Municipal Court on November 19, 2025. The City presented the testimony of two witnesses—Officer Jared Muehlbauer and Officer Jonathan Pieron. McCluster testified on his own behalf.

A. Testimony of Officer Muehlbauer

{¶ 7} In his testimony, Officer Muehlbauer described Ghost charging at the other dog. He explained that prior to the incident both Baby and Ghost appeared to be under McCluster’s control and by his side, but “there was a brief moment where [the dogs] were no longer under his control.”¹

{¶ 8} Officer Muehlbauer did not describe the interaction between Ghost and the other dog in detail during his direct examination but on cross-examination, he stated that the dogs made contact with one another. He estimated that at the time of the incident, Ghost and the other dog were maybe ten to fifteen feet apart, that Ghost maybe barked once, and then Ghost “jumped on” or “pounced on” the other dog. Officer Muehlbauer testified that he believed that the other owner pulled the dog’s leash back and attempted to separate the dogs. He confirmed that the other dog was not hurt during this interaction. Officer Muehlbauer told the court that while there was a moment where McCluster was

¹ Officer Muehlbauer repeatedly uses the plural “dogs” to describe the incident, however, when asked to clarify, he confirmed that he was only referring to Ghost.

not by Ghost's side, McCluster did go to the dog. Officer Muehlbauer described the entire altercation between the dogs as lasting "five seconds probably."

{¶ 9} When asked about what happened after the incident, Officer Muehlbauer stated that he did not talk to the other owner. He additionally testified that Officer Pieron ordered McCluster to regain control of his dogs but that the situation escalated and that an argument ensued for fifteen to twenty minutes. Officer Muehlbauer noted that during this argument, McCluster had control of both his dogs and that afterward, he was permitted to leave without putting the dogs on leashes.

B. Testimony of Officer Pieron

{¶ 10} In his testimony, Officer Pieron echoed many of the same details as Officer Muehlbauer. More specifically, he noted that at some point while they were talking to the family with the small dog, McCluster crossed the street toward their group with his two unleashed dogs by his side and stayed about fifteen to twenty feet away. Officer Pieron explained that McCluster was making his dogs sit but one was getting "antsy" and McCluster tapped that dog on its head.

{¶ 11} Officer Pieron noted that after the family walked away from the three TPD officers, McCluster's dog charged the other dog. He described the contact as "like a pounce or a jump to try to get at the other dog." Like Officer Muehlbauer, Officer Pieron confirmed that the smaller dog was not injured. Officer Pieron then testified that in response to the charge, he observed the other dog's owner "pull[] the dog up off it's (sic) feet and away from Mr. McCluster's dog to get the dog – to separate her dog from his dog" in what he described as a "helicopter motion." According to Officer Pieron, the

family members “were scared” and they departed quickly from the scene. At that same time, Officer Pieron observed McCluster come over and “regain[] control of his dog” by grabbing it by the collar. He explained that all of this happened over a few seconds. Officer Pieron admitted that after the incident he yelled at McCluster to get his dogs on a leash which led to a “pretty lengthy dispute.”

{¶ 12} On cross-examination, Officer Pieron noted that after telling McCluster to put his dogs on a leash, McCluster explained that he did not have a leash because that was how he socializes his dogs. When asked, Officer Pieron confirmed that McCluster was allowed to leave with the dogs unleashed and that at that point, the dogs remained under his control.

C. Rule 29 Motion

{¶ 13} After Officer Pieron’s testimony, the City rested and McCluster made a Crim.R. 29 motion for acquittal.² McCluster argued that the statute did not require his dogs to be on a leash as long as they were under the direct, constant supervision and control of the owner and in this case, Ghost was under his constant supervision—“[t]he

² The relevant provision of Crim.R. 29 provides the following:

(A) Motion for judgment of acquittal

The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state’s case.

entire what their (sic) calling incident lasted less than a few seconds. No dogs were hurt. The dogs -- he was giving commands for controlling of the animal.” He contended that the City had failed to show any evidence to the contrary.

{¶ 14} In opposition, the City argued that Ghost was not under control and that both officers testified that while both dogs initially listened to McCluster’s commands, Ghost stopped listening and then charged/pounced/made contact with another dog. Therefore, that dog was not in control at the time of the incident.

{¶ 15} The court found that there was “at least some testimony that the dog was not under control at some point” and denied McCluster’s motion.

D. Testimony of McCluster

{¶ 16} McCluster was the sole witness for the defense. In his testimony, he explained that he and his wife are disabled. The couple got the two dogs as preparation for the help they will eventually need due to their disabilities. McCluster clarified that both dogs are service dogs—Baby is certified while Ghost is still in training. He described Ghost’s training as “constant and consistent.”

{¶ 17} McCluster described their training and routines. He told the court that he educated himself and trains the dogs through criteria from the United States Service Dogs Association. He explained that service dogs “must support their owners, and also be socially [] acclimated” and that “[t]heir whole purpose is to ignore the public.” As part of this training, McCluster walks the dogs daily without leashes.

{¶ 18} Turning to the incident, McCluster testified that he saw that Jeep Fest was occurring and thought that it would be a good training opportunity for the dogs. He

stated that they walked around for about a mile and a half prior to the incident. At one point, they crossed the street and saw a family with a small dog at a table with three officers. He stated that the dog started “yapping” as soon as the dog saw Ghost and Baby. McCluster believed that Ghost wanted to play with the other dog—“[t]hat is his one issue that – that he wants to play. He doesn’t realize his size.” Consistent with the officers’ testimony, he noted that he sat Ghost down about fifteen to twenty feet away when the family started leaving.

The whole purpose of it -- because I saw the family was getting ready to get up to go. They were getting ready to go as I saw him. And because it was a distraction to Ghost, I wanted him to have that learning moment. The family got up, started leaving. They went around the planter. The little dog came around the planter, on a leash, and yapped one more time. Again, Ghost and -- me and my boys were getting ready to turn left and walk away. The little dog come behind the planter and yaps one (sic) again. Ghost takes off. Before he even got to the dog, my bad shoulder, I grabbed him by his -- he has a collar loop where there’s a handle. Both of them have collar loops with handles. They may not be leashes, but they are within arms reach control. That is another thing that I ensure. And also they have body vests on where there’s handles on their vests also. And they’re also on electronic collar control also. So as the little dog had came around the corner, Ghost reached for him and I got him. And as I bend down, I was like, oh you’re the cute little dude that was barking. And I said, I’m sorry, ma’am. And she was laughing. There was no little child there that was scared or anything like that. The family, after that, she was like, oh they’re just playing. They were just trying to play. And they were both wagging tails.

{¶ 19} McCluster claimed that the incident is “something that happens normally during training.” He stated that he apologized to the owner of the other dog and that they had a conversation after the incident. McCluster alleged that the officers who saw the incident interjected during this conversation and told him to put his dogs on a leash and that is when the woman walked away.

{¶ 20} McCluster described the encounter with the police as lasting forty-five minutes and that by the end, there were ten officers at the scene trying to “figure out what to charge me with.” He also alleged that the officers had their body worn cameras off until the middle of the encounter. Additionally, McCluster testified that he has had numerous “run-ins” with law enforcement, including with one of the present officers, throughout the last five years regarding his dogs, specifically because they are unleashed. He explained that he keeps documentation on service dogs to present to law enforcement during these encounters.

{¶ 21} Overall, McCluster maintained that “there was nothing myself or my dogs did wrong.” He explained that he had researched the leash requirements before taking the dogs in public, and that his dogs are trained more than many dogs on leashes. McCluster expressed that he just wants to enjoy the metro parks with his dogs. He exclaimed that his dogs were not unsupervised, unruly, or attacking. When asked, McCluster denied that the dogs made contact with one another.

{¶ 22} The defense rested upon the conclusion of McCluster’s testimony.

E. The Trial Court’s Decision

{¶ 23} After hearing closing arguments, the court made the following findings:

So the statute reads, “No owner or keeper of any dog or cat shall permit such dog or cat to run at large or allow any such dog or cat off the premises of the owner or keeper unless such dog or cat is restrained by a substantial leash or harness.” And then the key wording here, “Or otherwise under the direct and constant supervision and control of the owner or handler.” So the first officer testified that that was mostly true. That there was a brief altercation between the dogs, and the dog was back under control of Mr. McCluster. There was description that the smaller dog was pounced on and laid on it’s (sic) stomach. Further description that the owner pulled the

leash back to separate the dogs. And limitation of five seconds, that there was a loss of control. The second officer testified similarly his dog charged the other dog, made contact. Described as a pounce or jump. Both officers confirmed no injury. Officer Pieron said he came over and regained control, grabbing it by the collar. That collar was, in more detail, described by Mr. McCluster. Mr. McCluster's testimony acknowledges that is his dog went toward the other dog, but claims no contact. The statute reads, "Under the direct and constant supervision or control of the owner and handler." ***And there was a moment, albeit extremely small, and a dispute about what happened in that moment, but there was a moment when the dog was not under your control.*** You say there was no contact. The officers say there was contact, but there was that moment.

(Emphasis added.).

{¶ 24} The court found McCluster guilty but sentenced him to court costs only and stayed the imposition of said costs for 30 days.

{¶ 25} McCluster appealed to this court. He presents two assignments of error for our review:

I. The trial court abused its discretion when it denied Appellant's motion for acquittal pursuant to Crim. R. 29.

II. In the alternative, the conviction was not supported by the manifest weight of the evidence.

II. Analysis

A. Crim.R. 29

{¶ 26} In his first assignment of error, McCluster argues that the trial court erred when it denied his Crim.R. 29 motion for acquittal.

{¶ 27} A motion for acquittal under Crim.R. 29(A) challenges the sufficiency of the evidence. *State v. Brinkley*, 2005-Ohio-1507, ¶ 39. The denial of a motion for acquittal under Crim.R. 29(A) "is governed by the same standard as the one for

determining whether a verdict is supported by sufficient evidence.” *State v. Tenace*, 2006-Ohio-2417, ¶ 37.

{¶ 28} Whether there is sufficient evidence to support a conviction is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In reviewing a challenge to the sufficiency of evidence, “[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.” (Internal citations omitted.) *State v. Smith*, 80 Ohio St.3d 89, 113 (1997). In making that determination, the appellate court will not weigh the evidence or assess the credibility of the witnesses. *State v. Walker*, 55 Ohio St.2d 208, 212 (1978). “Rather, we decide whether, if believed, the evidence can sustain the verdict as a matter of law.” *State v. Richardson*, 2016-Ohio-8448, ¶ 13. Naturally, this requires “a review of the elements of the charged offense and a review of the state’s evidence.” *Id.*

{¶ 29} TMC 505.09(a) “Dogs or cats running at large; nuisances” provides that:

No owner or keeper of any dog or cat shall permit such a dog or cat to run at large, or allow any such dog or cat off the premises of the owner or keeper, unless such dog or cat is restrained by a substantial leash or harness or otherwise under the direct and constant supervision or control of the owner or handler. Any dog or cat within the limits of the City that is restricted upon the premises of the owner or keeper must be so restricted by means of a secured fastening or suitable enclosure. No leash shall be required when dogs and cats are permitted to exercise along streams and/or in parks, provided permits therefor have been obtained from the property owners or the Commissioner of Parks and Recreation.

{¶ 30} McCluster argues that his conviction is not supported by sufficient evidence because “at no time were Appellant’s dogs running at large, and were arguably

at all times under the ‘direct and constant supervision or control of the owner.’” To support his argument, McCluster emphasizes his experience in dog training and that this incident happened during Ghost’s training to be a certified service dog. McCluster highlights that he was within arm’s length of Ghost, and that neither dog was injured or exhibited aggressive behavior. Furthermore, McCluster notes that the police testified that they allowed him to leave because he had control of the dogs. Accordingly, McCluster asks this court to find that the City did not present evidence that he had lost control of his dog during this incident.

{¶ 31} TMC 505.09(a) requires that no dog or cat shall be allowed to run at large, or be allowed off the premises of its owner or keeper, *unless* that dog or cat is “restrained by a substantial leash or harness or otherwise under the direct and constant supervision or control of the owner or handler.” It is undisputed that Ghost was not leashed. Therefore, McCluster was required to keep him under his “direct and constant supervision or control.”

{¶ 32} While the only evidence presented against McCluster was the testimony of two of the officers who witnessed the incident, both officers testified that, albeit for mere seconds, McCluster lost control of Ghost when Ghost charged/pounced/jumped at the other dog. The trial court denied McCluster’s Crim.R. 29 motion based on this testimony.

{¶ 33} We must view the evidence in a light most favorable to the state in considering a trial court’s denial of a motion for acquittal under Crim.R. 29(A). *Smith*, 80 Ohio St.3d 89, at 113. First, TMC 505.09(a) has no requirements regarding aggression,
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injury, or contact; therefore, McCluster’s arguments regarding these factors have no bearing on our analysis. Next, Black’s Law Dictionary defines control as “[t]o exercise power or influence over.” CONTROL, Black’s Law Dictionary (12th ed. 2024). Both officers’ testimony indicates that for a brief moment, McCluster, regardless of his training and experience, did not maintain control over Ghost when Ghost left McCluster’s side and “charged” at the other dog. While McCluster may have quickly regained control over Ghost by lunging and grabbing Ghost’s collar, TMC 505.09(a) requires *constant* supervision or control. Thus, the approximately five seconds during which Ghost was free from McCluster’s control were sufficient to satisfy the requirement. Accordingly, we find that the City’s evidence that McCluster lost control of his dog is supported by sufficient evidence, and the trial court did not err by denying his Crim.R. 29 motion.

{¶ 34} We find McCluster’s first assignment of error not well-taken.

B. Manifest Weight

{¶ 35} In McCluster’s second assignment of error, he argues that his conviction was not supported by the manifest weight of the evidence.

{¶ 36} A manifest weight of the evidence challenge looks to whether the state met its burden of persuasion. *State v. Reillo*, 2026-Ohio-2701, ¶ 24. Weight of the evidence 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. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be

established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.

(Emphasis in original.) *Id.* at ¶ 25, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶ 37} Therefore, when we review a claim that a verdict is against the manifest weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the factfinder clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at ¶ 26; *see also Thompkins* at 387. As such, appellate courts may vacate a factfinder’s verdict and order a new trial “only in the exceptional case in which the evidence weighs heavily against the conviction.” (Cleaned up.) *Id.* at ¶ 27, quoting *Brown* at ¶ 31, quoting *Thompkins* at 387.

{¶ 38} “[A]ppellate courts reviewing a manifest-weight challenge must still give some deference to a fact-finder’s credibility determinations.” *Id.* at ¶ 3. This deference is owed because the fact-finder “is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” (Internal quotations omitted.) *Id.* at ¶ 28, quoting *In re Z.C.*, 2023-Ohio-4703, ¶ 14, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Importantly, while an appellate court may sit as a thirteenth juror, it may do so “only when evidence contradicts a fact-finder’s findings ... or when a witness’s testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” *Id.* at ¶ 3.

{¶ 39} Accordingly, we review McCluster’s manifest-weight challenge in a manner consistent with our usual practice, which is to extend deference to the factfinder’s credibility determinations.

{¶ 40} McCluster contends that the officers perceived that TMC 505.09(a) requires dogs to be leashed. He argues that when reading the code as written, it requires the “direct and constant supervision or control of the owner or keeper” and that in this instance, the evidence shows that McCluster had such supervision and control over Ghost. He describes the interaction as Ghost pouncing to try and play with the other dog and that he grabbed Ghost’s harness “almost instantaneously.” Furthermore, McCluster focuses on the fact that no harm occurred. In sum, he believes that this court should find that he was standing within arm’s length of his dog and therefore, under the circumstances, standing within arm’s length of a dog while training it to ignore other people, is maintaining control and supervision of the dog.

{¶ 41} When making its decision, the trial court explained why it found McCluster guilty—“there was a moment, albeit extremely small, and a dispute about what happened in that moment, but there was a moment when the dog was not under your control.” The trial court found the testimony of the officers credible that Ghost jumped or pounced onto the other dog and that McCluster regained control by grabbing Ghost’s collar.

{¶ 42} Both officers’ testimony—and McCluster’s own testimony—establish that Ghost broke away from McCluster and jumped at the smaller dog. Contrary to McCluster’s argument, it is irrelevant that Ghost was still within arm’s length and purportedly only wanted “to play” with the other dog; the TMC requires the unleashed

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dogs to be under *constant* supervision or control. After carefully reviewing the credibility of the witnesses and weighing the testimony, we are not convinced that this is an exceptional case in which the evidence weighs heavily against a conviction.

{¶ 43} Accordingly, we find McCluster’s second assignment of error not well-taken.

III. Conclusion

{¶ 44} Based on the foregoing analysis, we find McCluster’s first and second assignments of error not well-taken. Accordingly, we affirm the December 19, 2026 Sentencing Entry of the Toledo Municipal Court. McCluster is ordered to pay any costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Christine E. Mayle, J

JUDGE

Gene A. Zmuda, J

JUDGE

Myron C. Duhart, J

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
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