[Cite as *State v. Sebring*, 2023-Ohio-2911.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

STATE OF OHIO Appellee v. LEE SEBRING Appellant	C.A. No. 22AP0032 APPEAL FROM JUDGMENT ENTERED IN THE WAYNE COUNTY MUNICIPAL COURT COUNTY OF WAYNE, OHIO CASE No. 2022 CR-B 000115

DECISION AND JOURNAL ENTRY

Dated: August 21, 2023

FLAGG LANZINGER, Judge.

{¶1} Lee Sebring appeals his convictions from the Wayne County Municipal Court. For the following reasons, this Court affirms.

I.

{¶2} A Wayne County Municipal Court assistant prosecutor filed a complaint against Mr. Sebring for: (1) disseminating matter harmful to juveniles (i.e., to Q.H., a 16-year-old girl) in violation of R.C. 2907.31(A)(1); (2) disseminating matter harmful to juveniles (i.e., to E.B., a 16-year-old girl) in violation of R.C. 2907.31(A)(1); and (3) failure to comply with underage alcohol laws in violation of R.C. 4301.69(A). Mr. Sebring pleaded not guilty. The matter proceeded to a bench trial wherein the following evidence was adduced.

{¶3} As Mr. Sebring acknowledges in his merit brief, the facts underlying this appeal are not in dispute. Mr. Sebring was friends with the parents of C.S., a 16-year-old girl. C.S. had a

sixteenth birthday party at her house. Several of C.S.'s friends, including Q.H. and E.B., attended the birthday party. Mr. Sebring, who was 34 years old at the time, also attended the birthday party.

{¶4} According to E.B., the teenagers at the party (all of whom were in high school) swam, ate, and then went to the basement to watch a movie. The adults stayed upstairs, but Mr. Sebring went to the basement with the teenagers. E.B. testified that there were three couches in the basement, and that she was sitting on one of them while Mr. Sebring was sitting on another couch. Mr. Sebring asked E.B. to come sit next to him, but she declined. Mr. Sebring then "squeezed" himself between E.B. and another person on the same couch. Mr. Sebring rested his hand on E.B.'s knee and started playing with her hoodie. E.B. testified that Mr. Sebring gave her an alcoholic beverage, which E.B. explained contained Tito's and orange juice. E.B. testified that she was familiar with the taste of alcohol, and that she saw Mr. Sebring pour Tito's into the drink. When questioned by the trial court, E.B. clarified that Tito's is a brand of vodka.

{¶5} E.B. testified that Mr. Sebring asked to drive her home at least twice, but she declined. Mr. Sebring then had E.B. add him to Snap Chat, a messaging app. E.B. left the party and Q.H. drove her home. Mr. Sebring then started messaging E.B. through Snap Chat. In one of the messages, Mr. Sebring asked E.B. to return to the party, indicating that he "misse[d] his drinking buddy." E.B. did not immediately respond to Mr. Sebring's messages. Mr. Sebring then messaged E.B.: "Tell your mom that you want to spend the night here and let me eat that Pussy * * *." E.B. took a picture of the message, which the State introduced as an exhibit at trial. E.B. testified that Mr. Sebring apologized to her the next day for sending inappropriate messages, and that she blocked him on Snap Chat. On cross-examination, E.B. testified that the content of that message was not the type of thing that she discussed with her adult friends.

{¶6} Q.H. testified that C.S. is her best friend, and that they live across the street from each other. Q.H. testified that she met Mr. Sebring through C.S.'s family, and that she had known him for about a year and a half at the time of C.S.'s sixteenth birthday party. Q.H. testified that she drove E.B. home from the party and then returned to her house. When she returned home, Q.H. realized that she had left a bag at C.S.'s house. Q.H. then walked across the street to C.S.'s house and retrieved her bag. When she went inside, Mr. Sebring was sitting with C.S.'s parents in the kitchen, but Mr. Sebring did not say anything to her. Once she left C.S.'s house, Mr. Sebring started messaging Q.H. through Snap Chat, initially teasing her about another boy. Q.H. responded "LOL" because she wanted to end the conversation. Mr. Sebring then started sending her "inappropriate and * * * sexual" messages through Snap Chat, indicating that he knew where the spare bedroom was at C.S.'s house and insinuating that he wanted to have sex with Q.H. Mr. Sebring then messaged Q.H. about "[d]estroying [her] pussy[.]" Q.H. testified that Mr. Sebring's messages made her uncomfortable.

{¶7} After the State rested, defense counsel moved for acquittal under Crim.R. 29, which the trial court denied. The defense presented no witnesses. The trial court ultimately found Mr. Sebring guilty and sentenced him accordingly. Mr. Sebring now appeals, raising five assignments of error for this Court's review.

II.

ASSIGNMENT OF ERROR I

> SEBRING'S CONVICTION, UNDER R.C. 2907.31, VIOLATES THE FREEDOM OF SPEECH PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

{¶8} In his first assignment of error, Mr. Sebring argues that his conviction for disseminating matter harmful to juveniles violated his right to freedom of speech under the First

Amendment to the United States Constitution. Mr. Sebring argues that R.C. 2907.31 is a content-based regulation on speech, which is presumptively unconstitutional unless it is narrowly tailored to serve a compelling state interest. According to Mr. Sebring, R.C. 2907.31 is unconstitutional because the legal age of consent in Ohio is 16 years old, meaning the victims in this case could have consented to the acts contained in the messages. As a result, Mr. Sebring argues, there is no compelling state interest served by prohibiting messages that insinuate sex or oral sex.

{¶9} As the Ohio Supreme Court has stated, "[t]he ability to invalidate legislation is a power to be exercised only with great caution and in the clearest of cases." *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, ¶ 16. "That power, therefore, is circumscribed by the rule that laws are entitled to a strong presumption of constitutionality and that a party challenging the constitutionality of a law bears the burden of proving that the law is unconstitutional beyond a reasonable doubt." *Id.* Additionally, "[t]he Ohio Supreme Court has repeatedly stated that courts should avoid answering constitutional questions unless it is absolutely necessary to do so." *State v. Hale*, 7th Dist. Monroe No. 04 MO 14, 2005-Ohio-7080, ¶ 11, citing *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶ 9.

{¶10} "The United States Supreme Court has declared that '[c]ontent-based regulations are presumptively invalid.'" (Alteration sic.) *Wooster v. Entertainment One, Inc.*, 158 Ohio App.3d 161, 2004-Ohio-3846, ¶ 22 (9th Dist.), quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992). "Generally, a content-based regulation, that which 'stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes th[e] essential [First Amendment] right,' and therefore is subject to strict scrutiny." (Alterations sic.) *Id.*, quoting *Turner Broadcasting Sys. v. Fed. Communications Comm.*, 512 U.S. 622, 641-642 (1994). "Under the strict-scrutiny standard, a statute that infringes on a fundamental right is

unconstitutional unless the statute is narrowly tailored to promote a compelling governmental interest." *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, ¶ 39.

{¶11} At trial, Mr. Sebring's defense counsel presented an as-applied challenge to the constitutionality of R.C. 2907.31. This Court has explained as-applied constitutional challenges to statutes as follows:

> "A party may challenge a statute as unconstitutional on its face or as applied to a particular set of facts." * * * "In an as-applied challenge, the challenger 'contends that application of the statute in the particular context in which he has acted * * * [is] unconstitutional.'" * * * It is the challenger's burden to "'present[ ] clear and convincing evidence of a presently existing set of facts that make the statute[] unconstitutional and void when applied to those facts.'"

(Bracketed alterations sic.) *State v. Austin*, 9th Dist. Summit No. 28199, 2017-Ohio-7845, ¶ 8.

{¶12} R.C. 2907.31 provides that "[n]o person, with knowledge of its character or content, shall recklessly do any of the following * * * [d]irectly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile * * * any material or performance that is obscene or harmful to juveniles[.]" At trial, consistent with the complaint, the State proceeded under the theory that the messages Mr. Sebring sent were "harmful to juveniles[.]" In rendering its verdict, the trial court determined that the messages Mr. Sebring sent to both victims met the definition of "harmful to juveniles[.]" R.C. 2907.01(E) defines "[h]armful to juveniles" as:

> that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:
>
> (1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.
>
> (2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.
>
> (3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

{¶13} A "prurient interest" is a "shameful or morbid interest in nudity, sex, or excretion * * * [which] goes substantially beyond customary limits of candor in description or representation of such matters * * *." (Alterations sic.) *State v. Casto*, 9th Dist. Medina No. 2976-M, 2000 WL 1288178, *5 (Sept. 13, 2000), quoting *City of Urbana ex rel. Newlin v. Downing*, 43 Ohio St.3d 109, 116 (1989). "Whether a work appeals to the prurient interest or depicts sexual conduct in a patently offensive way is governed by contemporary community standards." *Casto* at *5. "To be patently offensive, the work must depict or describe 'hard core' sexual conduct." *Id.*, quoting *State v. Ward*, 85 Ohio App.3d 378, 381 (9th Dist.1993). "This requirement is satisfied if the material depicts or describes activity [that] meets the definition of 'sexual conduct'" under R.C. 2907.01(A), which includes cunnilingus. *Id.*

{¶14} In his merit brief, Mr. Sebring argues that there is no compelling state interest served by prohibiting 16-year-olds, who are of the age of consent, from receiving messages that insinuate sex or oral sex. He argues that "[p]resumably, teenagers in these ages had sex education and addressing female genitalia in a vulgar matter is not new, shocking, or corrupt in their minds." Mr. Sebring's general assertion that "teenagers in these ages" would not find the messages in this case to be new, shocking, or corrupt falls short of establishing clear and convincing evidence that R.C. 2907.31 is unconstitutional as applied to the facts in this case. Under the plain language of the statute, the "prevailing standards in the adult community as a whole with respect to what is suitable for juveniles" is the standard, not whether the juveniles themselves found the messages "new, shocking, or corrupt" like Mr. Sebring suggests. R.C. 2907.01(E)(2). Additionally, whether the messages appealed to the prurient interest of the juveniles is governed by contemporary community standards. *Casto*, 2000 WL 1288178, at *5. Mr. Sebring has not explained, much less argued, how those standards are unconstitutional as applied to the facts of this case.

{¶15} Additionally, Mr. Sebring's argument is based upon the flawed premise that the statute wholly criminalizes discussing sexual conduct with a person of the age of consent. It does not. Instead, the statute criminalizes disseminating material that is "harmful to juveniles" as that phrase is statutorily defined. At least one court that has addressed a challenge to the constitutionality of R.C. 2907.01, including the definition of "harmful to juveniles" and the use of "prevailing standards in the adult community with respect to what is suitable for juveniles" has held that the statute is constitutional and does not violate the First Amendment. *Am. Booksellers Found. for Free Expression v. Strickland*, 512 F.Supp.2d 1082, 1092, 1099 (S.D.Ohio 2007), *rev'd on other grounds*, 601 F.3d 622, 628 (6th Cir.2010). Other courts have similarly overruled challenges to the constitutionality of R.C. 2907.01, albeit for different reasons. *See, e.g., In re L.Z.*, 5th Dist. Licking No. 15-CA-36, 2016-Ohio-1337, ¶ 46 (overruling challenges to the constitutionality of R.C. 2907.01); *State v. Colegrove*, 140 Ohio App.3d 306, 314 (8th Dist.2000) (same); *State v. Karindas*, 2d Dist. Montgomery No. 12858, 1992 WL 103700, *1 (May 18, 1992) (same). Moreover, Mr. Sebring has failed to cite any law (aside from general First Amendment law) that supports his position in this regard. *See* App.R. 16(A)(7) (requiring an appellant's brief to include "[a]n argument * * * with citations to the authorities, statutes, and parts of the record on which appellant relies."). In short, Mr. Sebring has not met his burden of establishing that R.C. 2907.31 is unconstitutional beyond a reasonable doubt as applied to the facts of this case simply because the victims were 16 years old and could legally consent to the sexual conduct contained in the messages he sent to them. *See Yajnik*, 2004-Ohio-357, at ¶ 16. Mr. Sebring's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

SEBRING'S CONVICTION WAS BASED UPON INSUFFICIENT EVIDENCE.

{¶16} In his second assignment of error, Mr. Sebring argues that the State failed to present sufficient evidence to support his convictions. "Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo." *State v. Williams*, 9th Dist. Summit No. 24731, 2009-Ohio-6955, ¶ 18, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). The relevant inquiry is whether the prosecution has met its burden of production by presenting sufficient evidence to sustain a conviction. *Thompkins* at 390 (Cook, J., concurring). For purposes of a sufficiency analysis, this Court must view the evidence in the light most favorable to the State. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We do not evaluate credibility, and we make all reasonable inferences in favor of the State. *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). The evidence is sufficient if it allows the trier of fact to reasonably conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* The trier of fact is entitled to rely on direct, as well as circumstantial evidence. *See id.*

{¶17} This Court set forth the elements of R.C. 2907.31 and the relevant definitions in the preceding assignment of error and will not reiterate them here. At trial, Mr. Sebring's trial counsel argued that the State failed to present sufficient evidence to support the charge for disseminating matter harmful to juveniles related to Q.H. because the State did not produce copies of the actual messages Mr. Sebring sent to Q.H. Mr. Sebring's trial counsel also premised his argument under Crim.R. 29 on the basis that both charges for disseminating matter harmful to juveniles violated Mr. Sebring's rights under the First Amendment because, since the victims could have consented to the sexual conduct, it follows that it cannot be illegal to discuss it with them.

{¶18} In denying defense counsel's Crim.R. 29 motion, the trial court concluded that the State was not required to produce the actual messages Mr. Sebring sent to Q.H., and noted that messages received through Snap Chat are designed to be deleted. Regarding Mr. Sebring's argument under the First Amendment, the trial court concluded that R.C. 2907.31 is not unconstitutional. In doing so, the trial court concluded, in part, that the fact that the victims could have consented to the sexual conduct does not affect the analysis of whether the messages constituted harmful material for purposes of R.C. 2907.31.

{¶19} On appeal, Mr. Sebring makes four primary arguments in support of his position that the State failed to present sufficient evidence to support his convictions for disseminating matter harmful to juveniles. This Court will address Mr. Sebring's arguments in turn.

{¶20} First, Mr. Sebring argues that the State failed to produce sufficient evidence because it used leading questions to elicit testimony from the victims regarding the content of the messages. Initially, this Court notes that Mr. Sebring's trial counsel did not object to the State's use of leading questions at trial. Even if Mr. Sebring's trial counsel had objected, a trial court has discretion to allow the State to ask leading questions of its own witnesses, including juveniles. *State v. Ocasio*, 9th Dist. Lorain No. 15CA010773, 2016-Ohio-4686, ¶ 37. Even assuming without deciding that Mr. Sebring could establish that the trial court erred by allowing the State to ask the victims leading questions, this Court considers all of the testimony for purposes of analyzing the sufficiency of the evidence, regardless of any alleged error in its admission. *State v. Lauer*, 9th Dist. Wayne No. 22AP0017, 2023-Ohio-1076, ¶ 11. Mr. Sebring's argument, therefore, lacks merit.

{¶21} Second, Mr. Sebring argues that the State failed to prove the exact words Mr. Sebring used in his messages to the victims. Regarding Q.H., Q.H. confirmed in response to the

State's question that Mr. Sebring messaged her about "[d]estroying [her] pussy[.]" Regarding E.B., the State admitted a picture of the Snap Chat message Mr. Sebring sent to her, which stated: "Tell your mom that you want to spend the night here and let me eat that Pussy * * *." The fact that the State did not also produce a picture of the Snap Chat message Mr. Sebring sent to Q.H. does not mean the State failed to produce sufficient evidence to prove the content of that message. Rather, as this Court has stated, "[a] conviction under R.C. 2907.31(A)(1) does not require that the material in question be presented to the trial court." *State v. Toth*, 9th Dist. Lorain No. 05CA008632, 2006-Ohio-2173, ¶ 53. "Evidence of the content of the material can be established through testimony describing the material. Neither the statute nor the case law requires the actual material be produced and presented as evidence at trial." *Id.* Here, both victims testified in sufficient detail as to the content of the messages Mr. Sebring sent to them, including some of the exact language he used. Mr. Sebring's argument, therefore, lacks merit.

{¶22} Third, Mr. Sebring argues that the State failed to prove that the messages appealed to the "prurient interest" of the victims. Mr. Sebring's argument in this regard is premised upon the fact that the victims were of the age of consent. Aside from being minors, the age of the victims is not relevant for purposes of determining whether the messages appealed to the "prurient interest" of the victims. As noted, "[w]hether a work appeals to the prurient interest or depicts sexual conduct in a patently offensive way is governed by contemporary community standards." *Casto*, 2000 WL 1288178, at *5. Aside from mentioning the victims' ages, Mr. Sebring has not explained how the messages he sent to the victims fail to meet this standard. *See State v. Rupert*, 9th Dist. Medina No. 21CA0032-M, 2022-Ohio-329, ¶ 9 (noting that the appellant "has the burden of establishing error on appeal[.]"). Viewing the messages in a light most favorable to the State, this Court concludes that the State presented sufficient evidence to allow a trier of fact to reasonably

conclude that the State proved that the messages appealed to the "prurient interest" of the victims beyond a reasonable doubt. Mr. Sebring's argument in this regard, therefore, lacks merit.

{¶23} Fourth, Mr. Sebring argues that the State failed to prove that he knew or had reason to know that the victims were juveniles. Mr. Sebring, however, did not argue below that the State failed to prove that he knew or had reason to know that victims were juveniles when challenging the sufficiency of the evidence related to the charges for disseminating matter harmful to juveniles. "This Court has repeatedly held that when an appellant sets forth specific grounds in a [Criminal Rule] 29 motion, [he] forfeits all other arguments on appeal." (Alterations sic.) *State v. Sandin*, 9th Dist. Medina No. 21CA0040-M, 2023-Ohio-174, ¶ 10, quoting *State v. Vanest*, 9th Dist. Summit No. 28339, 2017-Ohio-5561, ¶ 27. Because Mr. Sebring asserted specific grounds in his Crim.R. 29 motion below regarding the charges for disseminating matter harmful to juveniles, he has forfeited this issue for purposes of appeal. *Id.*

{¶24} Regarding his conviction for failure to comply with underage alcohol laws, Mr. Sebring argues that the State failed to prove that he furnished an intoxicating liquor to E.B. because the testimony only indicated that Mr. Sebring gave E.B. a drink containing Tito's, but there was no testimony regarding its alcohol content. For the following reasons, this Court disagrees.

{¶25} R.C. 4301.69(A) governs, in part, furnishing beer or intoxicating liquor to underage persons. R.C. 4301.69(A), under which Mr. Sebring was convicted, provides that "no person shall * * * furnish [beer or intoxicating liquor] to an underage person[.]" "Intoxicating liquor" includes "all liquids and compounds, other than beer, containing one-half of one per cent or more of alcohol by volume which are fit to use for beverage purposes[.]" R.C. 4301.01(A)(1).

{¶26} Here, E.B. testified that Mr. Sebring gave her an alcoholic beverage, which E.B. explained contained Tito's and orange juice. E.B. testified that she was familiar with the taste of

alcohol, and that she saw Mr. Sebring pour Tito's into the drink. When questioned by the trial court, E.B. clarified that Tito's is a brand of vodka. Viewing this evidence in a light most favorable to the State, this Court concludes that the State presented sufficient evidence to allow the trier of fact to reasonably conclude that the State proved the essential elements of the crime beyond a reasonable doubt. *See State v. Conley*, 5th Dist. Stark No. 2002CA00285, 2003-Ohio-5323, ¶ 18 (holding, in part, that the testimony from juveniles indicating that the defendant provided them drinks containing vodka and orange juice was sufficient to sustain a conviction under R.C. 4301.69(A)); *True N. Energy, L.L.C. v. Liquor Control Comm.*, 10th Dist. Franklin No. 07AP-393, 2007-Ohio-5968, ¶ 32 (holding, in part, that an officer's testimony was sufficient for purposes of establishing a violation of R.C. 4301.69(A), "notwithstanding the fact that the [Ohio Department of Commerce, Division of Liquor Control] introduced neither the [beer] bottles themselves nor a chemical analysis of the contents thereof."); *compare State v. Kareski*, 9th Dist. Summit No. 25705, 2012-Ohio-2173, ¶ 6-7, *rev'd on other grounds, State v. Kareski*, 137 Ohio St.3d 92, 2013-Ohio-4008 (concluding that the statutory definition of "beer[,]" which includes an alcohol content of "one-half of one per cent or more, but not more than twelve per cent, of alcohol by volume[,]" is an element of the offense, and that the trial court erred by taking judicial notice that the beer served to the juvenile satisfied this statutory definition). Mr. Sebring's argument, therefore, lacks merit.

{¶27} In light of the foregoing, Mr. Sebring's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED WHEN IT EXCLUDED SEBRING'S EVIDENCE AND VIOLATED SEBRING'S DUE PROCESS RIGHTS.

{¶28} In his third assignment of error, Mr. Sebring argues that the trial court violated his due process rights when it excluded certain evidence from trial. For the following reasons, this Court disagrees.

{¶29} "This Court generally reviews a trial court's decision to admit or exclude evidence for an abuse of discretion." *State v. Steible*, 9th Dist. Lorain No. 21CA011787, 2023-Ohio-281, ¶ 7. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶30} Prior to trial, the State filed a motion in limine to preclude defense counsel from introducing social media posts from Q.H. that contained sexual language and showed Q.H. drinking alcohol. The State argued that the social media posts were not relevant as to whether the material in question was patently offensive to the prevailing standards in the adult community in Wayne County and, therefore, should be excluded. The State based its motion on Evid.R. 401, which defines "Relevant Evidence[,]" and Evid.R. 402, which provides that evidence that is not relevant is inadmissible. In response, defense counsel argued that the social media posts were relevant as to the prevailing community standards, particularly as to what material is considered offensive among young adults.

{¶31} The trial court granted the State's motion in limine, reasoning:

> [T]hose exhibits are inadmissible on the reasoning that they are not relevant to determining the appropriate standard of prevailing standards in the adult community as a whole with respect to what is suitable for juveniles. To use those messages from the alleged victim, under these circumstances is not relevant to that much, much, much, broader standard. Whether or not they are public is, does not sway that, does not change that definition so I'm going to exclude those at the appropriate time.

Mr. Sebring's defense counsel then proffered the social media posts as an exhibit for the record.

{¶32} On appeal, Mr. Sebring argues that the purpose of the social media posts was to show that the victims drank alcohol and understood sexual activity. Mr. Sebring argues that the social media posts were highly relevant for purposes of showing that the language used in the messages at issue "is not prurient interest [and] that this is normal for 16- and 17-year-olds." Again, Mr. Sebring's argument ignores the fact that "[w]hether a work appeals to the prurient interest or depicts sexual conduct in a patently offensive way is governed by contemporary community standards." *Casto*, 2000 WL 1288178, at *5. The standard is not whether the messages were "normal" for 16- and 17-year-olds to receive. This Court concludes that the trial court did not abuse its discretion when it excluded social media posts from Q.H. on the basis that they were not relevant. Mr. Sebring's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> SEBRING'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION (CLAUSE XIV, SECTION 1, UNITED STATES CONSTITUTION).

{¶33} In his fourth assignment of error, Mr. Sebring challenges the manifest weight of the evidence presented at trial. When considering whether a conviction is against the manifest weight of the evidence, this Court must:

> review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). A reversal on this basis is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶34} Mr. Sebring argues that the testimony of the victims was "questionable" and not credible, and that their testimony was mostly responsive to leading questions. As a result, he argues, his convictions are against the manifest weight of the evidence. This Court disagrees.

{¶35} Initially, this Court notes that Mr. Sebring acknowledged at the trial court and again on appeal that "[t]he facts in this case are not in dispute." In fact, Mr. Sebring's trial counsel acknowledged during his opening statement that "[n]o one is here to try to attack the credibility of these girls or say that they did anything wrong, they didn't. This is a legal issue." If, according to Mr. Sebring, the facts are not in dispute and this case simply presents a legal issue, then his challenge to the credibility of the victims is unavailing. Even so, the trial court–as the trier of fact in this case–was in the best position to judge the victims' credibility, and to evaluate their testimony accordingly. *State v. Rivera*, 9th Dist. Lorain No. 22CA011875, 2023-Ohio-1788, ¶ 33. The trial court chose to believe the State's version of the events, which is not a basis for reversal. *State v. Miller*, 9th Dist. Summit No. 30335, 2023-Ohio-1466, ¶ 36 ("Here, the jury chose to believe the State's version of the events, which is not a basis for reversal."). As a result, Mr. Sebring has not established that this is the exceptional case in which the evidence weighs heavily against the conviction. Mr. Sebring's fourth assignment of error is overruled.

ASSIGNMENT OF ERROR V

SEBRING RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶36} In his fifth assignment of error, Mr. Sebring argues that his trial counsel rendered ineffective assistance because he failed to challenge the sufficiency of the evidence related to the charge for failure to comply with underage alcohol laws. This Court disagrees.

{¶37} "[I]n Ohio, a properly licensed attorney is presumed competent." *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, ¶ 62. To prevail on a claim of ineffective assistance of

counsel, Mr. Sebring must establish: (1) that his counsel's performance was deficient to the extent that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment[;]" and (2) that "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A deficient performance is one that falls below an objective standard of reasonable representation. *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. To establish prejudice, Mr. Sebring must show that there existed a reasonable probability that, but for his counsel's errors, the outcome of the proceeding would have been different. *State v. Sowell*, 148 Ohio St.3d 554, 2016-Ohio-8025, ¶ 138. "This Court need not address both prongs of *Strickland* if an appellant fails to prove either prong." *State v. Carter*, 9th Dist. Summit No. 27717, 2017-Ohio-8847, ¶ 27.

{¶38} Mr. Sebring's trial counsel's failure to challenge the sufficiency of the evidence related to the charge for failure to comply with underage alcohol laws at trial "did not constitute a forfeiture of a sufficiency argument on appeal." *State v. McManaway*, 9th Dist. Wayne No. 20AP0046, 2022-Ohio-2086, ¶ 28. In resolving Mr. Sebring's second assignment of error, this Court concluded that Mr. Sebring failed to establish that his conviction for failure to comply with underage alcohol laws was not supported by sufficient evidence. "Thus, 'even if defense counsel had moved for a judgment of acquittal, [Mr. Sebring] has failed to demonstrate that there is a reasonable probability that the result of trial would have been different.'" *Id.*, quoting *State v. Basford*, 9th Dist. Medina No. 20CA0017-M, 2021-Ohio-161, ¶ 50. As a result, Mr. Sebring cannot establish that his trial counsel provided ineffective assistance. *McManaway* at ¶ 28. Mr. Sebring's fifth assignment of error is overruled.

III.

{¶39} Mr. Sebring's assignments of error are overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JILL FLAGG LANZINGER
FOR THE COURT

HENSAL, P. J.
CONCURS.

CARR, J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

WESLEY A. JOHNSTON, Attorney at Law, for Appellant.

ANGELA WYPASEK, Prosecuting Attorney, and BRIANNA DIETRY, Assistant Prosecuting Attorney, for Appellee.