[Cite as *State v. Mullins*, 2016-Ohio-8347.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 16AP-236 (C.P.C. No. 15CR-838)
v.	:	No. 16AP-237 (C.P.C. No. 14CR-5922)
Christopher J. Mullins,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 22, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert,* for appellee.

On brief: *Giorgianni Law LLC*, and *Paul Giorgianni*, for appellant.

APPEALS from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Christopher J. Mullins, appeals from judgments of the Franklin County Court of Common Pleas convicting him of harassment with a bodily substance, in violation of R.C. 2921.38(C). For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On October 28, 2014, Whitehall police officer Dustin Willis responded to a call regarding a single vehicle accident at 33 Collingswood Avenue in Whitehall, a residence located across the street from the parking lot of the 840 Lounge. The homeowner had called police to report that a vehicle containing three males had crashed into her fence. When Willis arrived at the residence, he spoke with the homeowner who identified appellant as "the one that drove the car away after the crash." (Tr. Vol. I at 15-16.) Willis testified that when he made contact with appellant in the parking lot of the

840 Lounge, appellant "appeared to be heavily intoxicated." (Tr. Vol. I at 16.) According to Willis, appellant was "confrontational and uncooperative," but he did answer "some basic questions." (Tr. Vol. I at 16.) Willis testified that appellant denied that he was involved in the accident. Willis placed appellant in handcuffs for his own safety and began moving appellant toward his police cruiser. According to Willis, appellant "kept trying to turn his body around towards me." (Tr. Vol. I at 17.) When they reached the cruiser, Willis advised appellant that he was under arrest for disorderly conduct, at which point appellant spat on the ground. Willis ordered appellant into the cruiser but he resisted. As Willis pushed appellant into the cruiser, appellant spat in his face and on his lip.

{¶ 3} Willis testified that as he drove appellant to the police station, he "contacted a medic for treatment for [him]self." (Tr. Vol. I at 18.) Willis recalled that appellant was "loud, argumentative, yelling profanity" and that he "demanded to know why he was under arrest." (Tr. Vol. I at 18.) Willis testified that after he informed appellant that he was under arrest for harassment by bodily substance and disorderly conduct, the following exchange took place:

> Q. And after you advised him of that did he say or do anything?
>
> A. He did.
>
> Q. What did he do?
>
> A. He said, "It's not like I have AIDS or anything."
>
> Q. Did you ask him prior to him saying "it's not like I have AIDS or anything," did you ask him any questions about any diseases that he had?
>
> A. No, not prior.
>
> Q. After he made the statement, something to the effect of, "it's not like I have AIDS or anything," what did you do?
>
> A. I asked him if he did have a disease.
>
> Q. And what did he say?

A. He said, "Just Hep C.

(Tr. Vol. I at 19.)

{¶ 4} On October 30, 2014, police took appellant to the Grant Hospital emergency room where he gave a blood sample for testing to determine whether appellant was infected with certain communicable diseases, including hepatitis. An emergency room note regarding appellant's hospital visit reads, in part, as follows: "He says he did test positive for hepatitis C about one month ago. * * * Past medical history is COPD, which is chronic obstructive pulmonary disease and hepatitis C." (Tr. Vol. I at 161, State's Ex. D.) On November 21, 2014, a Franklin County Grand Jury indicted appellant in case No. 14CR-5922 on the charge of harassment with a bodily substance, in violation of R.C. 2921.38(B), a felony of the fifth degree.

{¶ 5} For reasons not revealed in the record, Whitehall police never received lab results from the blood sample given by appellant on October 30, 2014. Consequently, on February 9, 2015, police returned appellant to Grant Hospital where he gave a second blood sample. The sample tested positive for hepatitis C. The grand jury subsequently indicted appellant in case No. 15CR-838 on the additional charge of harassment with a bodily substance, in violation of R.C. 2921.38(C), a felony of the third degree.

{¶ 6} The trial court joined the two indictments for trial. Appellant waived his right to a jury trial and tried the case to the court. At the close of the state's evidence, appellant moved the court for a judgment of acquittal pursuant to Crim.R. 29. The trial court denied the motion. Appellant renewed the motion at the close of all evidence but the trial court denied that motion as well.

{¶ 7} The trial court found appellant guilty of the charges in the indictments but merged the two convictions for purposes of sentencing. The trial court sentenced appellant on the third-degree felony conviction to 3 years of community control, with 75 days of home incarceration and 45 days in jail. Appellant timely appealed to this court from the judgment of the trial court.[1]

II. ASSIGNMENTS OF ERROR

{¶ 8} Appellant assigns the following as trial court error:

[1] For the reasons set forth in the October 17, 2016 journal entry, appellee's motion to dismiss is denied.

> 1. The trial court overruled Mr. Mullins's Rule 29 motion for acquittal on the F-3 charge at the close of the State's case.
>
> 2. The trial court Mr. Mullins's Rule 29 motion for acquittal on the F-3 charge at the close of the defense's case.
>
> 3. The F-3 conviction was not supported by sufficient evidence.
>
> 4. The F-3 conviction is contrary to the manifest weight of the evidence.

III. LEGAL ANALYSIS

{¶ 9} The trial court found appellant guilty of both harassment with a bodily substance, in violation of R.C. 2921.38(B), a felony of the fifth degree, and harassment with a bodily substance, in violation of R.C. 2921.38(B), a felony of the third degree. R.C. 2921.38(B) defines the fifth-degree felony as follows:

> No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

{¶ 10} R.C. 2921.38(C) defines the third-degree felony offense as follows:

> No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

{¶ 11} Appellant's assignments of error speak only to his conviction of the third-degree felony charge of harassment with a bodily substance, in violation of R.C. 2921.38(C). Appellant does not challenge his conviction of the fifth-degree felony offense of harassment with a bodily substance, in violation of R.C. 2921.38. Appellant concedes that the state proved the elements of the fifth-degree felony beyond a reasonable doubt,

and he asks this court to reverse his conviction of the third-degree felony and remand the case for sentencing on the fifth-degree felony. Thus, in the context of this appeal, the dispute is whether the state produced sufficient evidence to prove beyond a reasonable doubt that appellant had knowledge that he was a carrier of the hepatitis virus when he spat on Willis's face and lip.

A. First Assignment of Error

{¶ 12} In appellant's first assignment of error, appellant argues that the trial court erred when it overruled his Crim.R. 29 motion for acquittal made at the close of the state's evidence. We disagree.

{¶ 13} Crim.R. 29(A) provides that "[t]he 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." In *State v. M.L.D.*, 10th Dist. No. 15AP-614, 2016-Ohio-1238, this court set out the standard of review we apply when reviewing a trial court's ruling on a motion for judgment of acquittal:

> A Crim.R. 29 motion tests the sufficiency of the evidence, and, accordingly, we apply the same standard of review to Crim.R. 29 motions that we use in reviewing sufficiency of the evidence as a challenge to a guilty verdict. *State v. Hernandez*, 10th Dist. No. 09AP-125, 2009-Ohio-5128, ¶ 6; *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37, 847 N.E.2d 386.
>
> The legal concepts of sufficiency of the evidence and weight of the evidence involve different determinations. [*State v.*] *Thompkins*, [78 Ohio St.3d 380] at 386 [(1997)]. As to sufficiency of the evidence, " 'sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." *Id.*, citing *Black's Law Dictionary* 1433 (6th Ed.1990). A determination as to whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id*. When we review the sufficiency of the evidence on appeal, we construe the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable

> doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. As a result, when we review the sufficiency of the evidence, we do not, on appeal, reweigh the credibility of the witnesses. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79, 767 N.E.2d 216.
>
> The relevant inquiry on review of the sufficiency of the evidence is whether, "after viewing the evidence in the 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." (Emphasis sic.) *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). A reversal based on insufficient evidence has the same effect as a not-guilty verdict because such a determination "means that no rational factfinder could have voted to convict the defendant." *Tibbs v. Florida*, 457 U.S. 31, 41, 102 S. Ct. 2211, 72 L. Ed. 2d 652 (1982).

Id. at ¶ 44-46.

{¶ 14} It is with this standard in mind that we consider appellant's first assignment of error. The question raised by appellant's assignment of error is whether the evidence presented by the state is sufficient to sustain appellant's conviction harassment with a bodily substance, in violation of R.C. 2921.38(C). R.C. 2921.38(C) provides, in relevant part, that "[n]o person, with knowledge that the person * * * is a carrier of a hepatitis virus, * * * and with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with * * * [a] bodily substance * * * by expelling the bodily substance upon the other person."

{¶ 15} In addition to Willis, the state called Whitehall police detective Lou Spazialetti as a witness. Spazialetti testified that he obtained the court order requiring the Franklin County Sherriff's Office to release appellant to his custody for the purpose of obtaining a sample of appellant's blood for testing. Spazialetti transported appellant to Grant Hospital on October 30, 2014 for that purpose. At trial, Spazialetti testified as follows:

> Q. Explain what happened when you were at the ER waiting for him to have this testing done, just the process, what you observed, what you heard.

> A. * * * They went through the general questions -- the nurse. And I remember him saying that he had Hep C; that this was a waste of time because he had Hep C. And then they just went through all the paperwork and procedures that the hospital does. Then finally I think the doctor came in and spoke with him. And then after that they did a blood draw.

(Tr. Vol. I at 189.)

{¶ 16} The state also called Martin Kelston, M.D., as an expert witness for the purpose of explaining the procedures used to obtain a sample of appellant's blood, test the blood sample for the presence of communicable disease, and to lay an evidentiary foundation for the admission of the test results into evidence. Dr. Kelston acknowledged that he is not an expert with regard to hepatitis and that he is not a virologist.

{¶ 17} Dr. Kelston's testimony establishes that the medical profession classifies hepatitis C as a "virus." (Tr. Vol. I at 163.) His testimony also establishes that the blood of a person infected with the hepatitis C virus may contain the antibodies IgG and IgM, and/or the hepatitis C antigen, which indicates the presence of viral particles. Dr. Kelston was unaware of any scientific test that could detect the presence of the antigen in the blood of a person infected with the hepatitis C virus. According to Dr. Kelston, appellant tested positive for the hepatitis C antibody known as IgG, which means that appellant had contracted the hepatitis C virus at some time in his life. Dr. Kelston stated that the IgG antibody is the marker for chronic hepatitis. Dr. Kelston testified that a person who has the acute form of the hepatitis C virus will test positive for the hepatitis C antibody IgM. Dr. Kelston acknowledged that the test results were negative for the hepatitis C antibody IgM.

{¶ 18} At the close of the state's case, appellant's trial counsel made the following argument in support of appellant's Crim.R. 29 motion for judgment of acquittal:

> All of the evidence presented was simply that he was the carrier of an antibody, which is not the same thing as having the actual virus in his system. As the doctor testified, there is no way that they can tell with the evidence presented whether or not Mr. Mullins had that virus within his system.
>
> So at this time, Your Honor, even in a light most favorable to the State, the limitation exists that that information is only about the antibody and not about the active disease. So at this

> time I would submit that the State has failed to meet its burden on both counts.

(Tr. Vol. I at 197.)

{¶ 19} Statutory interpretation is a question of law that we review de novo. *State v. Vancleef*, 10th Dist. No. 13AP-703, 2014-Ohio-2144, ¶ 6, citing *Aubry v. Univ. of Toledo Med. Ctr.*, 10th Dist. No. 11AP-509, 2012-Ohio-1313, ¶ 10, citing *State v. Banks*, 10th Dist. No. 11AP-69, 2011-Ohio-4252, ¶ 13. The primary goal of statutory interpretation is to determine and give effect to the General Assembly's intent in enacting the statute. *Vancleef*. To determine legislative intent, we first consider the statutory language in context, construing the words and phrases according to rules of grammar and common usage. *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, ¶ 16. "'"Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted."'" *Banks* at ¶ 13, quoting *State v. Palmer*, 10th Dist. No. 09AP-956, 2010-Ohio-2421, ¶ 20, *reversed on other grounds*, 131 Ohio St.3d 2787, 2012-Ohio-580, quoting *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus.

{¶ 20} In this instance, the language of the statute is clear and unambiguous. In our view, the essence of the offense defined in R.C. 2921.38(C) is the offender's intent to cause the victim to fear potential transmission of the hepatitis virus by contacting the victim with the offender's bodily fluids under circumstances where the offender has knowledge that he or she is a carrier of the hepatitis C virus. The statutory language does not distinguish between the hepatitis C antibody and the hepatitis C antigen. Nor does the statute mention "viral particles." (Tr. Vol. I at 165.) Furthermore, the statutory language does not distinguish between those individuals who are suffering from the acute form of hepatitis at the time of the offense and those who have the chronic form of the virus. In our view, proof that the offender harbored the hepatitis C antibody at the time of the offense is sufficient proof that the offender was a carrier of the hepatitis virus at the time of the offense.

{¶ 21} Appellant maintains that the rule of lenity expressed in R.C. 2901.04(A) requires this court to employ the narrowest construction of the term "carrier of a hepatitis

virus." R.C. 2921.38(C). R.C. 2901.04(A) provides that "[e]xcept as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused." The rule of lenity, however, applies only where the statutory language under consideration is ambiguous and subject to varying interpretations. *State v. Chappell*, 127 Ohio St.3d 376, 2010-Ohio-5991, ¶ 16; *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706, syllabus.

{¶ 22} As noted above, there is no ambiguity in the relevant statutory language. Nor is the language of the statute reasonably susceptible to the hyper-technical and overly narrow construction advocated by appellant. If the General Assembly had intended to limit the term "carrier of the hepatitis virus" to only those individuals who have the acute form of the virus at the time of the offense, the General Assembly would have inserted that limiting language into the statute. Similarly, if the General Assembly had intended to limit the term "carrier of a hepatitis virus" to only those individuals whose blood tests positive for the hepatitis C antigen, indicating the presence of viral particles, they could have added that language to the statute. Moreover, if we accept Dr. Kelston's testimony that there is no scientific test to determine the presence of the hepatitis C antigen, appellant's interpretation of the statutory language would render the statute virtually meaningless.

{¶ 23} Nevertheless, appellant argues that Dr. Kelston testified that the results of the blood test prove that appellant could not have been a carrier of the hepatitis C virus on October 28, 2014. Trial counsel's cross-examination of Dr. Kelston reads, in relevant part, as follows:

> Q. * * * Having the IgG in your system, does that make you a carrier of the virus?
>
> A. I don't know the specifics of it. I can tell you that we treat Hep C as though they always have the potential -- if their IgG is positive for Hep C and they've already been seen medically, we treat those situations as such.
>
> Q. Doctor, my question is, if someone only has the antibody in their system can they give someone else hepatitis C? Are they contagious with just the antibodies in their system?

> A. Certainly can. But there's no way to know whether that person is going to be able to do that or not.
>
> Q. Perhaps you misunderstood my question. If they did not have the virus in their system and they cleared it years ago and only had the antibodies, can they infect somebody?
>
> A. I don't know that anybody ever totally loses the virus. I have no idea. And, again, I am not an expert in this area. I think you would need to have someone else who studies this area to be able to answer that level of detail.
>
> Q. So based on the information that you have you cannot tell this Court with any level of certainty whether or not Mr. Mullins currently or at the time of the test had the Hep C virus?
>
> A. The actual virus.
>
> Q. The actual virus.
>
> A. I have nothing to say he has the actual virus.

(Tr. Vol. I at 169-70.)

{¶ 24} When we consider Dr. Kelston's testimony in the proper context, we believe that when Dr. Kelston spoke of the "actual virus," he understood that to mean the presence of the hepatitis C antigen, which indicates the presence of viral particles. (Tr. Vol. I at 170.) Thus, we do not read Dr. Kelston's testimony as an admission that the results of the test performed on appellant's February 9, 2015 blood sample revealed that appellant was not a carrier of the hepatitis C virus. To the contrary, we understand Dr. Kelston's testimony to be that the results of the blood test indicate that, as of February 9, 2015, appellant had the potential to transmit the hepatitis C virus to others.

{¶ 25} The word "carrier," for purposes of R.C. 2921.38(C), is not defined in R.C. Chapter 2921 or elsewhere in the Ohio Revised Code. However, the medical dictionaries define the term "carrier" with relative uniformity. For example, Mosby's Dictionary of Medicine, Nursing & Health Professions (8th Ed.2009) defines a "carrier" at page 314 as "[a] person or animal who harbors and can potentially spread an organism that causes disease in others but does not become ill." Similarly, Taber's Cyclopedic Medical

Dictionary (20th Ed.2005) defines "carrier" at page 349 as "[a] person who harbors a specific pathogenic organism, has no discernable symptoms or signs of the disease, and is potentially capable of spreading the organism to others." Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (7th Ed.2003) defines a "carrier" at page 303 as "an individual who harbors the specific organisms of a disease without manifest symptoms and is capable of transmitting the infection; the condition of such an individual is referred to as the carrier state."

{¶ 26} On redirect examination, Dr. Kelston testified as follows:

> Q. And would a person who is positive for hepatitis C antibody, would that person -- would it be possible for that person to be contagious with just knowledge of them having the antibody in their system?
>
> A. They are treated as though they are potentially contagious.
>
> Q. So they're treated as though they are a carrier of hepatitis C and you would respond accordingly?
>
> A. Correct.

(Tr. Vol. I at 179-80.)

{¶ 27} Contrary to appellant's assertions, Dr. Kelston's testimony, when construed in the state's favor, provides sufficient evidence to prove beyond a reasonable doubt that appellant was a carrier of the hepatitis C virus on February 9, 2015. Appellant argues, however, that even if the results of the blood test establish that appellant was a carrier of the hepatitis C virus on February 9, 2015, the state produced insufficient evidence to prove beyond a reasonable doubt that appellant knew he was a carrier of the hepatitis C virus on October 28, 2014, when he spat on Willis's face and lip. Again, we disagree.

{¶ 28} The state may rely on circumstantial evidence to support a finding that the accused acted knowingly. *State v. Ingram*, 10th Dist. No. 11AP-1124, 2012-Ohio-4075, ¶ 22; *State v. McClelland*, 10th Dist. No. 08AP-205, 2008-Ohio-6305, ¶ 18. When the state relies on circumstantial evidence to prove the essential elements of its case, there is no need for such evidence to be irreconcilable with any reasonable theory of defense in order to support a conviction. *State v. Davis*, 10th Dist. No. 98AP-192 (Sept. 24, 1998), citing *State v. Jenks*, 61 Ohio St.3d 259 (1991), *superseded by state constitutional*

amendment on other grounds, as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102 (1997).

{¶ 29} Pursuant to R.C. 2901.22(B), a person acts knowingly when the person "has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact." As noted above, Willis testified that appellant told him on October 28, 2014 that he had "Hep C." (Tr. Vol. I at 19.) The state also produced an emergency room note from appellant's October 30, 2014 hospital visit. The note reads, in part, as follows: "He says he did test positive for hepatitis C about one month ago. * * * Past medical history is COPD, which is chronic obstructive pulmonary disease and hepatitis C." (Tr. Vol. I at 161, State's Ex. D.) Spazialetti testified that on February 9, 2015, he heard appellant tell a nurse that he had hepatitis C. The statements attributed to appellant are unqualified. Thus, the state produced evidence that appellant knew he had tested positive for the hepatitis C virus approximately one month prior to the date of the offense. In our view, appellant's unqualified admission that he had tested positive for hepatitis C approximately one month prior to the offense, combined with the results of the February 9, 2015 blood test evidencing the fact that appellant tested positive for the hepatitis C antibody several months after the offense, is sufficient to prove beyond a reasonable doubt that appellant knew he was a carrier of the hepatitis C virus on October 28, 2014, when he spat in Willis's face.

{¶ 30} Based on the foregoing, we hold that the trial court did not err when it denied appellant's Crim.R. 29 motion for a judgment of acquittal at the close of the state's evidence. Accordingly, appellant's first assignment of error is overruled.

B. Second and Third Assignments of Error

{¶ 31} In appellant's second assignment of error, appellant argues that the trial court erred when it overruled the Crim.R. 29 motion for acquittal made by appellant at the close of all evidence. In appellant's third assignment of error, appellant argues that the evidence presented at trial is insufficient to sustain his conviction beyond a reasonable

doubt. Because these assignments of error raise the same issue, we will consider them jointly.

{¶ 32} As noted in connection with appellant's first assignment of error, the evidence presented by the state is sufficient to sustain appellant's conviction beyond a reasonable doubt. The only additional evidence appellant produced was his own sworn testimony. Appellant testified on direct examination, in relevant part, as follows:

> Q. Now, Mr. Mullins, in the hospital records, they indicate that you told them that you have Hep C or you had a test that said you had Hep C?
>
> A. I was in Maryhaven previous to that and they had told me that I had the antibody for Hep C and that I should quit drinking because of my liver.
>
> Q. And did you take that to mean that having an antibody meant you had the disease?
>
> A. Oh, I kind of thought I did. But then after I looked into it and I talked to the people at Comp Drug and I was informed by the classes they had that you couldn't, you know, that it was just dormant, the only way I could give, pass it away was blood to blood, you know.
>
> * * *
>
> THE WITNESS: You know, I could just pass it like blood to blood or having sex or something like that.
>
> * * *
>
> Q. So, Mr. Mullins, to your knowledge did you have hepatitis C on October 28th?
>
> A. Not to my knowledge; I had the antibody.
>
> Q. When was the last time you were ever treated specifically for hepatitis C?
>
> A. I've never been treated for it.
>
> Q. Never been treated for the virus?
>
> A. No, ma'am.

(Tr. at Vol. I at 209-10.)

{¶ 33} Although appellant admitted to knowing only that he had the hepatitis C antibody at the time of the offense, appellant's testimony establishes that he believed he could transmit the hepatitis C virus to others. Thus, appellant's testimony is consistent with the state's theory that appellant was a carrier of the hepatitis C virus on the date of the offense. Moreover, as noted above, pursuant to R.C. 2901.22(B), "[w]hen knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact." Appellant's testimony establishes that he knew he had tested positive for the hepatitis C antibody prior to the offense and that he believed he could transmit the hepatitis C virus to others. Thus, appellant's testimony, when combined with the test results from appellant's February 9, 2015 blood sample, provides sufficient evidence to support his conviction beyond a reasonable doubt.

{¶ 34} By appellant's testimony and through cross-examination of Dr. Kelston, appellant's trial counsel attempted to establish that hepatitis C is a blood-borne illness and that appellant knew he could not have infected Willis via saliva. However, on redirect examination, Dr. Kelston responded "[d]efinitely" when asked if it was possible for saliva to contain blood. (Tr. Vol. I at 175.) Moreover, the statute does not require an offender to know that he or she can transmit the hepatitis C virus via saliva, just that he or she can potentially transmit the virus to others. In other words, the plain language of the statute does not require the state to prove that appellant knew his conduct in spitting on Willis was likely to transmit the hepatitis C virus. Rather, the statute merely requires the state to prove that appellant knew he was a carrier of the hepatitis C virus and that he intended to harass, annoy, threaten, or alarm Willis by committing one of the prohibited acts set out in the statute. Expelling bodily fluids on another is one of the acts prohibited by the statute.

{¶ 35} We note that appellant also denied he intentionally spat on Willis and that he intended to harass, annoy, threaten, or alarm Willis by expelling his bodily fluids in Willis's face and on his lip. However, appellant has abandoned that defense in this appeal, arguing only that the state failed to produce sufficient evidence that he knew he

was a carrier of the hepatitis C virus. Construing the evidence in favor of the state, as is required when reviewing a claim that the evidence is insufficient to sustain a conviction, we find that a reasonable trier of fact could find beyond a reasonable doubt that appellant knew he was a carrier of the hepatitis C virus and that he intended to harass, annoy, threaten, or alarm Willis by expelling his saliva in Willis's face and on his lip. Thus, the record contains sufficient evidence to support appellant's conviction.

{¶ 36} Because the record contains sufficient evidence to support appellant's conviction beyond a reasonable doubt, we hold that the trial court did not err when it overruled appellant's Crim.R. 29 motion made at the close of all evidence. Accordingly, we overrule appellant's second assignment of error. For the same reasons, we overrule appellant's third assignment of error.

C. Fourth Assignment of Error

{¶ 37} In his fourth assignment of error, appellant contends that his conviction is against the manifest weight of the evidence. We disagree.

{¶ 38} " '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 omitted.) *M.L.D* at ¶ 6, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

{¶ 39} The finder of fact at trial is in the best position to weigh the credibility of testimony by assessing the demeanor of the witnesses and the manner in which they testify, their connection or relationship with the parties, and their interest, if any, in the outcome. The finder of fact can accept all, part, or none of the testimony offered by a witness, whether it is expert opinion or eyewitness fact, and whether it is merely evidential or tends to prove the ultimate fact. *M.L.D.* at ¶ 7, citing *State v. McGowan*, 10th Dist. No. 08AP-55, 2008-Ohio-5894, citing *State v. Antill*, 176 Ohio St. 61, 67 (1964).

{¶ 40} When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a

"thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. *M.L.D.* at ¶ 8, citing *Thompkins* at 387. "An appellate court should reverse a conviction as against the manifest weight of the evidence in only the most 'exceptional case in which the evidence weighs heavily against conviction,' instances in which 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.' " *M.L.D.* at ¶ 8, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 41} Here, appellant's manifest weight argument mirrors his sufficiency argument. In other words, appellant contends that the weight of the evidence does not support a finding that appellant knew he was a carrier of the hepatitis virus because the state did not present evidence that appellant suffered from the active or acute form of the hepatitis virus on October 28, 2014. As we stated in connection with appellant's first three assignments of error, the statute does not place that great of a burden on the state. Appellant admitted that he tested positive for the hepatitis C antibody one month before he spat on Willis and that he believed, at that time, he could potentially transmit the hepatitis C virus to others. The state produced undisputed evidence that appellant's blood contained the hepatitis C antibody several months after the offense. Appellant has conceded that the weight of the evidence supports a finding that he expelled his bodily fluids on Willis with the intent to harass, annoy, threaten, or alarm him.

{¶ 42} On this evidence, the trial court found appellant guilty of harassment with a bodily substance, in violation of R.C. 2921.38(B), a felony of the third degree. Sitting as a thirteenth juror, we find that the weight of the evidence supports the trial court's judgment. Accordingly, appellant's fourth assignment of error is overruled.

IV. CONCLUSION

{¶ 43} Having overruled appellant's four assignments of error, we affirm the judgments of the Franklin County Court of Common Pleas.

Motion to dismiss denied;
judgments affirmed.

BROWN and HORTON, JJ., concur.

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