[Cite as *State v. McKinley*, 2016-Ohio-3420.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO, CITY OF YOUNGSTOWN,	)	
PLAINTIFF-APPELLEE,,	)	CASE NOS. 15 MA 0052
V.	)	15 MA 0054
WILLIAM McKINLEY,	)	OPINION
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Youngstown Municipal Court of Mahoning County, Ohio
Case Nos. 14 CRB 2359, 14 CRB 2366

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: June 9, 2016

[Cite as *State v. McKinley*, 2016-Ohio-3420.]
DONOFRIO, P.J.

{¶1} Defendant-appellant, William McKinley, appeals from his February 12, 2015, convictions for failure to comply with the Youngstown Property Maintenance Code in two cases in Youngstown Municipal Court following a bench trial.

{¶2} On October 23, 2014, a criminal complaint was filed against Appellant for failing to comply with the Youngstown Property Maintenance Code in violation of Youngstown City Ordinance (YCO) 1309.02(j). That ordinance requires that all commercial demolition work in the City of Youngstown, once begun, continue daily until finished (excluding holidays, Sundays, and inclement weather days). The complaint related to commercial property formerly known as the Woodside Receiving Hospital at 800 E. Indianola Ave.

{¶3} On October 24, 2014, a second criminal complaint was filed against Appellant for failing to comply with the same ordinance which also requires that all residential demolition projects be completed within 72 hours after they begin. This complaint was with regard to residential property at 1824 Selma.

{¶4} Appellant filed a motion to dismiss both complaints on February 9, 2015, arguing that the ordinance is unconstitutional on its face because it requires individuals not compensated by the City "to work daily at its direction" and that failure to comply could result in incarceration; that the ordinance is in violation of the Thirteenth Amendment to the U.S. Constitution and Article I, Section 6 of the Ohio Constitution, both of which prohibit involuntary servitude; and that the ordinance was unreasonable. The City filed a response on February 12, 2015.

{¶5} The trial court held a hearing on Appellant's motion on February 12, 2015. After hearing argument from both parties, the trial court denied Appellant's motion to dismiss.

{¶6} Immediately after the trial court's denial of Appellant's motion to dismiss, both parties indicated they were prepared to proceed to trial, whereupon a bench trial took place.

{¶7} The City presented two witnesses, Abigail Brubaker and Officer Russell Davis. Brubaker testified that she is the City's code enforcement officer and blight

remediation superintendent and is charged with overseeing demolition work. She testified that, with regard to the Indianola property, there were numerous days when the weather was sunny and warm in the middle of summer during which no work was performed. Brubaker testified that she has overseen between 50 and 100 commercial projects of similar size that were completed in five to eight months after demolition started, including the GE building on Market Street, the Wean United building, and car lots on Wick Avenue. She testified that she visited the Indianola property between 50 and 75 times and that the project began in August, 2012, but was still not completed in February, 2015. With regard to the Selma property, Brubaker testified that demolition began in September, 2014, and ended in November, 2014, although she did not know the exact dates.

{¶8} Officer Davis testified that he has been a Youngstown City police officer for over 20 years and was responsible for patrolling the section of the City where the Indianola property is located during the entire period of time in question. He testified that he observed the property on approximately 75% of the days he worked during this time frame and that there had been no activity at the site for the few months preceding his testimony. He testified that during this time frame there were many days, including sunny days, when no work was being performed.

{¶9} Appellant offered no evidence.

{¶10} Appellant was found guilty on both complaints. With regard to the Indianola property, Appellant was sentenced to three days incarceration and electronic monitored house arrest for one year. The electronic monitored house arrest would terminate earlier upon successful completion of the demolition and cleanup. Appellant also received two years of intensive probation, a $250.00 fine, and a $100.00 reimbursement sanction for Community Control Supervision. With regard to the Selma property, Appellant was sentenced to electronic monitored house arrest for one year. The electronic monitored house arrest would terminate earlier upon successful completion of the demolition and cleanup (the City acknowledged that the project is complete), two years of intensive probation supervision, a $250.00

fine and a $100.00 reimbursement sanction for Community Control Supervision. Appellant's sentence was stayed on March 27, 2015, pending this appeal.

{¶11} Appellant filed timely appeals in both cases on March 27, 2015.

{¶12} Appellant's First Assignment of Error states:

> THE TRIAL COURT ERRED IN FINDING YOUNGSTOWN CITY ORDINANCE SECTION 1309.02(j) A VALID EXERCISE OF THE CITY'S POLICE POWER.

{¶13} The Ohio Constitution, Article XVIII, Section 3, provides:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

{¶14} Legislative enactments are presumed to be constitutional. *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 327, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 18 (2006); *McCrone v. Bank One Corp.,* 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 20. In *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38-39, 616 N.E.2d 163, (1993), the Ohio Supreme Court explained:

> In determining the constitutionality of an ordinance, we are mindful of the fundamental principle requiring courts to presume the constitutionality of lawfully enacted legislation. *Univ. Hts. v. O'Leary* (1981), 68 Ohio St.2d 130, 135, 22 O.O.3d 372, 375, 429 N.E.2d 148, 152; and *Hilton v. Toledo* (1980), 62 Ohio St.2d 394, 396, 16 O.O.3d 430, 431, 405 N.E.2d 1047, 1049. Further, the legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt. *Id.* See, also, *Hale v. Columbus* (1990), 63 Ohio App.3d 368, 372, 578 N.E.2d 881, 883.

{¶15} In *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 147, 128 N.E.2d 59, (1955), the Ohio Supreme Court explained:

> A regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality. This court has held enactments of the General Assembly to be constitutional unless such enactments are clearly unconstitutional beyond a reasonable doubt.

To establish that an ordinance is unconstitutional is a heavy burden.

{¶16} Appellant does not assert that YCO 1309.02(j) is in conflict with any general laws. See Ohio Constitution, Article XVIII, Section 3. Instead, Appellant asserts that this ordinance is not a reasonable ordinance in that it does not take into consideration daily work demands of a contractor, such as equipment failures, personnel issues, other business interests, and business judgment. In effect, Appellant argues that the City took over operation of the Appellant's business. The ordinance also, according to Appellant, interferes with private rights by apparently allowing only Sunday as a day for religious observances. Appellant relies on *Hausman v. Dayton*, 73 Ohio St.3d 671, 678, 653 N.E.2d 1190, (1995) and *Teegardin v. Foley*, 166 Ohio St. 449, 143 N.E.2d 824 (1957), paragraph one of the syllabus, quoted in *Hausman*.

{¶17} The parties seemingly agree that the *Teegardin* test is the correct test to be applied here. Indeed, Appellant cites no other authority beside *Teegardin* and *Hausman* to support his position. *Teegardin* provides that, to be a valid exercise of the City's police power, the ordinance

> must directly promote the general health, safety, welfare or morals and must be reasonable; the means adopted to accomplish the legislative purpose must be suitable to the end in view, must be impartial in operation, must have a real and substantial relation to such purpose

> and must not interfere with private rights beyond the necessities of the situation.

Id., paragraph one of the syllabus.

{¶18} Appellant asserts that the ordinance in question here fails the *Teegardin* and *Hausman* test because it places work demands upon Appellant without considering Appellant's changing factors involved in the operation of a business such as equipment failures, personnel issues, other business interests or contracts, and Appellant's own business judgment. Appellant cites no analogous cases or other authority to support these assertions. Appellant offers no evidence that any of these potential problems affected him but only makes these assertions in the abstract.

{¶19} In response, the City notes that the purpose of the ordinance is to allow some degree of control over demolition projects in the City of Youngstown. The City explains that the Indianola project is a large demolition project and is next door to a preschool. Appellant does not assert that this is an area over which the City is incapable of exercising some control. The City notes it has many nuisance properties and an interest in ensuring that once a commercial demolition project begins, it is competently managed. As the City notes, once a project begins, there is rubble and construction equipment on the site. There is a need to fence the property. All of this, according to the City, relates to public safety and health and is not unreasonable. Appellant has failed to articulate why the ordinance does not relate to these health and safety concerns of the City.

{¶20} In the last sentence of his First Assignment of Error, Appellant also suggests that Appellant's private rights are being interfered with as the ordinance allows only Sunday "as the day for religious observance." Brief of Appellant, p. 5. Or, as the City puts it, Appellant raises the "specter of religious discrimination." State's Response Brief, p. 10.

{¶21} It seems difficult to discern Appellant's complaint. Appellant does not indicate which Constitution, assuming Appellant is making a constitutional claim, has

been violated and does not articulate whether he is making an establishment or free exercise claim, assuming he is making a First Amendment religion claim.

{¶22} The ordinance states that Sunday is a day on which demolition work is not expected to continue, (along with holidays and inclement weather days). There is nothing in the record to suggest what religion, if any, Appellant practices and how the ordinance impacts his ability to practice that religion.

{¶23} In *Humphrey v. Lane,* 89 Ohio St.3d 62, 2000-Ohio-435, 728 N.E.2d 1039, the Ohio Supreme Court explained with regard to a free exercise claim:

> Before we analyze the state action in any case, we must first look at the beliefs of the person affected by the state action, and how those beliefs are affected by the state action. To state a prima facie free exercise claim, the plaintiff must show that his religious beliefs are truly held and that the governmental enactment has a coercive affect against him in the practice of his religion.

Humphrey at ¶ 68. Appellant has met none of the criteria required for a prima facie free exercise claim.

{¶24} Noting that Appellant does not make his religion claim specific to Appellant, but suggests simply that the ordinance generally interferes with private rights, the City asserts that Appellant does not have standing to make this claim. The City cites *Snyder v. Snyder*, 7th Dist. No. 04 JE 16, 2004-Ohio-7216, ¶ 9, opinion modified on denial of reconsideration, 7th Dist. No. 04 JE 16, 2005-Ohio-567, ¶ 9. In *Snyder*, this Court observed:

> "The question of standing is whether a litigant is entitled to have a court determine the merits of the issues presented." *Ohio Contractors Assn. v. Bicking,* 71 Ohio St.3d 318, 320, 1994–Ohio–0183, citing *Warth v. Seldin* (1975), 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343. "Appeal lies only on behalf of a party aggrieved by the final order

> appealed from. Appeals are not allowed for the purpose of settling abstract questions, but only to correct errors injuriously affecting the appellant." *Ohio Contract Carriers Assn. v. Pub. Util. Comm.* (1942), 140 Ohio St. 160, 42 N.E.2d 758, syllabus. "Under the common law, it is well settled that the right to appeal can be exercised only by those parties who are able to demonstrate a present interest in the subject matter of the litigation which has been prejudiced by the judgment of the lower court." *Willoughby Hills,* 64 Ohio St.3d at 26, 591 N.E.2d 1203. In order to have standing to appeal, the injury to the appellant "must be concrete and not simply abstracted or suspected." *Ohio Contractors,* 71 Ohio St.3d at 320, 643 N.E.2d 1088.

Id. Appellant has failed to show how he has been injured by the exception to working on Sundays in the ordinance. Thus, he does not have standing to assert either a free exercise or establishment claim.

{¶25} Appellant has failed to show that the ordinance is contrary to any general law or that it is unreasonable. Appellant has not met the heavy burden of showing that the ordinance is unconstitutional in any manner either as applied to Appellant or otherwise. Appellant's first assignment of error has no merit and is overruled.

{¶26} Appellant's Second Assignment of Error states:

> THE TRIAL COURT ERRED IN FINDING EXPERT TESTIMONY WAS NOT REQUIRED ON THE ELEMENT OF "REASONABLE TIME".

{¶27} Appellant claims that expert testimony was required to determine whether the demolition of a former hospital was done in a reasonable time. Appellant argues that demolition services are unique and extraordinary and therefore require special knowledge and skill. Appellant relies upon *Ohio Historical Society v. General Maintenance*, 65 Ohio App.3d 139,147, 583 N.E.2d 340 (10th Dist. 1983). The City

offered neither witness as an expert.

{¶28} The City responds by noting that lay witnesses can, in some instances, provide opinions, that the admission of lay opinion testimony lies in the trial court's discretion, and that lay witness opinion testimony is acceptable when based on work or life experience. The City apparently concluded that Appellant's complaint is only about Brubaker's testimony as its response focuses upon her testimony. The City argues that Brubaker did not provide expert testimony. Rather, the City argues that Brubaker provided lay opinion testimony based on her work experience in accord with Evid.R. 701.

{¶29} Both witnesses testified about numerous instances where, after the demolition began, there was no work performed on days during which work was required under the ordinance. Neither witness offered any testimony about how the actual process of demolition should be performed. Their testimony related to whether the Indianola project was worked daily after the work began and whether Selma was completed in 72 hours.

{¶30} In its case in chief, the City first presented witness Brubaker. Brubaker testified, *inter alia,* that she was the code enforcement and blight remediation superintendent charged with overseeing demolition work. (Tr. 11-12). With regard to the Indianola property, Brubaker testified that she visited and monitored demolition projects; that the Indianola project was next to a preschool (Tr. 12); that Appellant was issued a permit for the project on August 13, 2012 (Tr. 13-15); the demolition project began in August 2012 (Tr. 15); that she visited the site several times (Tr. 16); that as of the day before she testified, February 12, 2015, the project was not complete, there were piles of rubble, and the fence around the property was wide open *Id.*. There was no work being performed. Appellant did not object to any of this testimony and Brubaker expressed no opinion.

{¶31} On cross-examination with regard to the Indianola property, Appellant asked Brubaker – "Are you providing an opinion as to what would be a reasonable time to complete a project of 23,000 square feet?" (Tr. 22). Brubaker responded that

she believed a reasonable time would be within six months. *Id.* When asked what her experience was in construction and contracting, Brubaker responded that she oversees all demolition projects within the City. *Id.* Appellant asked Brubaker if she had any training or education in "how to tear apart a building" to which she responded negatively. *Id.* Appellant then made a statement to the court that Brubaker could not provide an expert opinion as to a reasonable time to complete the structure. (Tr. 22-23).

{¶32} On redirect, the City followed-up as to the basis of the opinion elicited from Brubaker on cross-examination regarding a reasonable amount of time to complete the Indianola project. (Tr. 27). Brubaker responded that the opinion was based on her observation of other commercial demolition in the City. *Id.* Appellant then objected, but was overruled, as the trial court pointed out – "You are the one that first asked the question." *Id*. Brubaker then testified that the demolition project had not been worked "even roughly everyday" since the project began *Id.*; that there were days when the weather "was warm and sunny in the middle of the summer and there is no work being done" and that she has never seen any other projects take this long. (Tr. 28-29).

{¶33} On examination by the trial court, Brubaker testified that she has overseen between 50 and 100 commercial demolition projects of similar size that were completed within five weeks to eight months. (Tr. 33). Brubaker stated that she had visited the Indianola project between 50 and 75 times. *Id.*

{¶34} On recross Brubaker testified that commercial projects of a similar size which she has overseen include the GE building on Market Street, the Wean United Steel building, and car lots on Wick Avenue. (Tr. 34-35).

{¶35} As to the Selma property, Brubaker testified, on direct examination, that a demolition permit was issued on September 4, 2014 (Tr. 15); that the demolition began in September 2014 (Tr. 18); that she visited the site in September 2014 *Id.*; that when she visited the job was not finished and there was a broken machine on the property (Tr. 18-19); that at the end of November 2014, she again visited the

property and the demolition was still not complete (Tr. 20). Again, Appellant raised no objection to any of this testimony and Brubaker did not render an opinion with regard to the Selma property.

{¶36} On cross-examination with regard to the Selma property, Appellant did not ask any questions or raise any issue with regard to the question of expert testimony. Appellant did elicit from Brubaker that she did not know the exact date the Selma demolition began in September, 2014 or the exact date in November, 2014 that it was completed. (Tr. 24).

{¶37} The City also offered the testimony of Officer Davis. On direct examination, Davis testified that he has been a Youngstown police officer in the patrol division for 20 years (Tr. 36); that he patrols the area of the Indianola demolition project *Id.*; he has worked that area since before the project started and remembers numerous complaints about the property before the project started (Tr. 36-37); that since the project started he has driven past the site three quarters of the days he worked (Tr. 37); that there had been no activity for the few months prior to his testimony including on nice sunny days (Tr. 38); and that "for a long time there hasn't been that much going on there." *Id*. No opinion was offered by Davis.

{¶38} On cross-examination, Davis testified that the Indianola project has been ongoing for years and is not yet complete. (Tr. 39-40).

{¶39} Appellant offered no evidence.

{¶40} Appellant asserts, relying entirely upon *Ohio Historical Society*, that in order for the City to obtain a conviction under YCO 1309.02(j), the City must offer expert testimony as to what a reasonable time would be for the completion of demolition projects such as those at issue here. *Ohio Historical Society* involved a construction project which included the installation of an elastomeric membrane ("EPDM") roof. There, OHS showed that there was a defect in the EPDM system but solicited no expert testimony concerning the standard of ordinary care to be used in this type of construction. This, the court concluded, resulted in a failure to prove negligence. The testimony needed to establish whether ordinary care was used in

the installation of an EPDM roof involves the type of specialized knowledge addressed by Evid.R. 702. Under that Rule, a witness may testify as an expert if:

> (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
>
> (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (C) The witness' testimony is based on reliable scientific, technical, or other specialized information.* * *

Evid.R. 702(A)-(C).

{¶41} Here, the City did not offer any expert witness. Rather, the City argues that Brubaker offered acceptable lay opinion testimony in accord with Evid.R. 701.

{¶42} Before addressing this issue, it is worth revisiting the ordinance. The ordinance specifically defines what "a reasonable time" is, i.e., 72 hours for a residential structure and, once commenced, continuous work for a commercial structure. The ordinance states:

> All demolition work, once commenced, must be completed within a reasonable time, seventy-two hours for residential structures and, once started, commercial demolition work must be continued daily until finished.

Determining whether the project is completed within a "reasonable time" is a factual determination. For residential demolition, the project must be done in 72 hours. For commercial projects, once commenced, the demolition must continue daily with certain exceptions. With regard to both, the City presented unrebutted testimony which the finder of fact could reasonably have determined was evidence beyond a reasonable doubt that Appellant violated this ordinance.

{¶43} Assuming that there is a need for some opinion testimony as to a "reasonable time" under the ordinance, the City argues that Brubaker's testimony was properly admitted and considered under Evid.R. 701. That Rule provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

{¶44} This Court considered the difference between lay witnesses and expert witnesses in *State v. Johnson*, 7th Dist. No. 13 JE 5, 2014-Ohio-1226. In *Johnson*, this Court began its consideration of Evid.R. 701 and Evid.R. 702 by explaining:

> The admission or exclusion of evidence lies in the trial court's sound discretion. *State v. Sage,* 31 Ohio St.3d 173, 510 N.E.2d 343 (1987). In order to find an abuse of that discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable; and not merely an error of law or judgment. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

Johnson, ¶ 48.

{¶45} *Johnson* was concerned with whether the testimony of a detective, who was not offered as an expert witness, was lay opinion testimony or was so specialized that it could be offered only by an expert. *Johnson*, ¶ 52. The detective's testimony dealt with the ability to identify gang affiliation based on certain identifying tattoos. *Johnson*, ¶ 53. This Court then considered the difference between lay person opinion testimony and expert opinion testimony:

> The Fifth and Twelfth Appellate Districts have explained the distinction between lay person opinion testimony and expert opinion testimony.

> *State v. Russell,* 12th Dist. No. CA2012–08–156, 2013–Ohio–3079, ¶ 36; *State v. Lewis,* 192 Ohio App.3d 153, 948 N.E.2d 487, 2011–Ohio–187, ¶ 23 (5th Dist.). Lay person opinion testimony "results from a process of reasoning familiar in everyday life, while expert opinion testimony results from a process of reasoning that only specialists in the field can master." *Russell,* quoting *Lewis.*

Johnson, ¶ 56. The *Johnson* court concluded that even though the detective there could have qualified as an expert, it was not improper to allow him to offer a lay opinion pursuant to Evid.R. 701 since a proper foundation was laid.

{¶46} Here, the problem is simpler. Brubaker testified about her experience in the field, the number of demolition projects she has overseen, the time involved in most of those projects, and, perhaps most importantly, how far outside of the guidelines of YCO 1309.02(j) this project fell. She testified about the length of the Selma project and the numerous days when, without excuse, no work was performed on the Indianola property as well as how much longer that project lasted compared to other similar projects she had monitored. Her testimony meets the criteria of Evid.R. 701, i.e., her testimony was rationally based on her perception and experience and it was helpful to get a clear understanding of her testimony and a determination of whether Appellant's completion of the two demolition projects here fell outside the parameters of the ordinance.

{¶47} Considering all of the foregoing, we conclude that the trial court did not act unreasonably, arbitrarily, or unconscionably in allowing and considering the testimony of Brubaker, whether it is considered factual testimony or lay witness opinion. The trial court did not abuse its discretion by allowing this testimony. Thus, Appellant's second assignment of error has no merit and is overruled.

{¶48} Appellant's Third Assignment of Error states:

> THE TRIAL COURT ERRED IN NOT REQUIRING METEOROLOGICAL EVIDENCE.

{¶49} Appellant cites no authority to support this Assignment of Error. It is unclear whether Appellant asserts that there should have been expert witness testimony regarding the weather over the periods in question or whether some other type of evidence is necessary. Appellant ties this evidentiary issue to the possible penalty: "Such meteorological evidence may not be necessary under a more reasonable ordinance that does not include Appellant's incarceration." (Brief of Appellant, p. 7.) Generally speaking, the penalty in a criminal ordinance does not dictate the type of proof needed to establish the elements of the crime.

{¶50} Meteorological evidence is essentially, at least as it is relevant here, evidence about the weather. Both Brubaker and Davis provided unrebutted testimony about numerous days where the weather was warm and sunny and no work was being done. This is unchallenged testimony about the weather on numerous days. To the extent Appellant might argue expert testimony was needed to make these observations, this has no merit for the same reasons discussed regarding Appellant's second assignment of error concerning opinions offered by lay witnesses. Here, it appears that factual testimony from witnesses that there were numerous days where the weather was warm and sunny, in the summer, when no work was being performed, suffices to prove a violation of the ordinance.

{¶51} The City suggests that what Appellant is trying to articulate is an assertion regarding the sufficiency of the evidence. Recently, with regard to the sufficiency of evidence in a criminal case, this Court stated:

> Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith,* 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In essence, sufficiency is a test of adequacy. *State v. Thompkins,* 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id.* In reviewing the record for sufficiency, the 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. *Smith,* 80 Ohio St.3d at 113, 684 N.E.2d 668.

State v. Ferrara, 7th Dist. No. 14 MA 0004, 2015-Ohio-3822, 42 N.E.3d 224, ¶ 58. Here, considering the testimony of Brubaker and Davis in a light most favorable to the City, there is sufficient evidence upon which the trial court could have concluded that the essential elements of the crime were proven beyond a reasonable doubt.

{¶52} Appellant's third assignment of error is without merit and is overruled.

{¶53} Appellant's Fourth Assignment of Error states:

> YOUNGSTOWN CITY ORDINANCE SECTION 1309(j) VIOLATES THE 13TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 6 OF THE OHIO CONSTITUTION.

{¶54} Appellant complains that YCO 1309.02(j) violates the Thirteenth Amendment to the U.S. Constitution and Section 6 of the Ohio Constitution because, although under no contract with the City, it obligates Appellant to "work daily at its direction" and because Appellant's contract with the owner of the property for the demolition "may have imposed a work schedule different from the one mandated by YCO 1309.02(j)."

{¶55} The Thirteenth Amendment to the U.S. Constitution provides, in pertinent part:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

{¶56} Article I, Section 6, of the Ohio Constitution provides;

> There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

{¶57} The thrust of Appellant's argument is the fact that Appellant was not hired by the City but entered into a private contract with the landowner to demolish these structures. As Appellant puts it – "The terms of that contract may well have imposed a work schedule different from that mandated by § 1309.02(j)." (Brief of Appellant, p. 9). Appellant complains that the ordinance demands work while ignoring "other lawful contracts." Appellant argues that the third party business contract that controls and obligates Appellant to work pursuant to the time parameters set out in the ordinance is involuntary servitude.

{¶58} The only authority Appellant offers to support this argument is *State ex rel. Carriger v. City of Galion*, 53 Ohio St.3d 250, 560 N.E.2d 194 (1990). In *Carriger*, the trial court ordered defendant to work to pay for the cost of appointed counsel. The Ohio Supreme Court explained that there was no statute or rule of court that authorized the trial judge to require indigent criminal defendants to work to pay for their appointed counsel. Thus, the only possible authority upon which the judge could be acting was judicial authority. The Supreme Court indicated there is no inherent judicial authority to validate this practice. Thus, the Court concluded that requiring indigent defendants to work for the government to pay for appointed counsel "constitutes involuntary servitude for a debt, not punishment for a crime." *Carriger* at 251.

{¶59} Here, Appellant was not forced to undertake these demolition projects. Appellant voluntarily entered into a contract with the owner to perform the work. Because of the nature of the work, the City has an ordinance which imposes certain requirements upon those who undertake demolition projects. Appellant has failed to demonstrate that this ordinance is not a reasonable exercise of the City's power. (See the discussion under Appellant's First Assignment of Error). Appellant, at least implicitly, agreed to abide by duly enacted ordinances regarding demolition projects in the City. Unlike *Carriger*, Appellant was not forced or compelled in any way to undertake these demolition projects. Once Appellant agreed to undertake the work, it is not unreasonable to require Appellant to abide by the ordinances passed by the

City for safety and health reasons.

{¶60} The City responds asserting that the Thirteenth Amendment to the U.S. Constitution and Article I, Section 6 of the Ohio Constitution were never designed or intended to address a situation such as the one at issue here. In *U.S. v. Kozminski*, 487 U.S. 931, 943-944, 108 S. Ct. 2751, 101 L.Ed.2d 788 (1988) the Supreme Court explained:

> Our precedents reveal that not all situations in which labor is compelled by physical coercion or force of law violate the Thirteenth Amendment. By its terms the Amendment excludes involuntary servitude imposed as legal punishment for a crime. Similarly, the Court has recognized that the prohibition against involuntary servitude does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties.

Appellant was not forced to work. Appellant agreed to perform the work and, in doing so, subjected himself to the reasonable health and safety regulations imposed on all who engage in demolition work in the City.

{¶61} The argument of the City is similar to *Rowe v. City of Elyria*, 6th Cir. No. 01-3005, 2002 WL 1272119 (June 6, 2002), where a property owner complained, *inter alia*, that enforcement of a city mowing ordinance subjected him to involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution. The property owner complained that forcing him to mow the grass or pay a fine could be characterized as a "badge or incident of slavery." *Rowe* *6. Citing *Kozminski*, the Sixth Circuit explained that while the Thirteenth Amendment was not limited to the abolishment of African slavery, the phrase "involuntary servitude" was intended to cover forms of compulsory labor akin to African slavery which "in practical operation would tend to produce like undesirable results." *Id*. The Sixth Circuit concluded:

> While we have not located any cases discussing the imposition of

> charges for failing to maintain property, we conclude that even if the tree lawn is owned by the City enforcement of the mowing ordinance does not involve the kind of compulsion that would constitute involuntary servitude under the Thirteenth Amendment.

Id.

{¶62} The court in *Midwest Retailer Associated, Ltd. v. City of Toledo*, 563 F.Supp.2d 796, 809 (N.D.Ohio 2008) expressed a similar interpretation:

> The contemporary view is that involuntary servitude claims, to be cognizable, relate to extreme cases, such as labor camps, isolated religious sects, and forced confinement.

{¶63} Regularly enacted statutes are presumed to be constitutional. *Scott; McCrone;* and *Arnold.* The burden to establish that a statute is unconstitutional is on the one challenging the constitutionality. *Dickman.* Appellant, relying only upon *Carriger*, has failed to meet this burden. *Kozminski, Rowe,* and *Midwest,* in the absence of anything to the contrary other than *Carriger,* support the position of the City that the Thirteenth Amendment and Article I, Section 6 of the Ohio Constitution are not applicable here. Thus, Appellant's fourth assignment of error is without merit and is overruled.

{¶64} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.