

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070035
	:	TRIAL NO. 06CRB-14528
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
KRYSTAL WHITE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Following a bench trial, the Hamilton County Municipal court convicted defendant-appellant Krystal White of the sale of liquor to minors in violation of R.C. 4301.69(A), imposed court costs, and granted a stay pending appeal. In her appeal, White brings forth two assignments of error contesting the sufficiency and the weight of the evidence underlying her conviction. We consider these assignments together.

On the evening of March 8, 2006, Cincinnati police officers Chris Sulton and Jody Dillinger and a confidential informant went to the Phoenix Café, a local bar in downtown Cincinnati, to conduct a liquor-permit-violation investigation. This required the female informant, who was under the legal drinking age, to go inside the bar and purchase and receive an alcoholic beverage, while the officers waited outside.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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At trial, the informant initially testified that she had entered the bar between 9:00 and 10:00 p.m., but then explained that she had not been wearing a watch and that she had entered the bar when it was “dark.” She identified White as the bartender who had sold her the alcoholic beverage.

Officer Sulton, who was in plainclothes, testified that he had remained outside, had peered through the window, and had observed the informant purchase an alcoholic beverage from a bartender with “different-color” hair. He then entered the bar, sat by the informant, ordered the same drink, then switched drinks with the informant, and poured the informant’s drink into a container. The liquid in that container was later tested and found to be alcohol. Officer Sulton then called Officer Dillinger on her cellular phone and told her that a bartender with “different-colored” hair was to be cited for serving liquor to the underage informant.

Officer Dillinger stated that she had cited White, who had black and white checkered-colored hair. The citation was issued at 8:35 p.m.

White testified that she had been the only bartender on duty after 6:30 p.m. at the Phoenix Café on March 8, 2006, and that she did have black and white hair at that time. But she also testified that she had not seen the informant or Officer Sulton in the bar that night.

When reviewing a challenge to the sufficiency of the evidence, we must determine “[w]hether after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt.”<sup>2</sup> But when evaluating a claim that a conviction is against the manifest

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<sup>2</sup> *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

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weight of the evidence, this court sits as a “thirteenth juror.”<sup>3</sup> We review the record, weigh the evidence, consider the credibility of witnesses, and determine whether 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.<sup>4</sup> The discretionary power to reverse should only be invoked in exceptional cases “where the evidence weighs heavily against the conviction.”<sup>5</sup>

R.C. 4301.69(A) provides that “no person shall sell beer or intoxicating liquor to an underage person\* \* \* unless the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian.”

White first argues that the state did not prove its case beyond a reasonable doubt because the confidential informant testified that she had purchased her beverage between 9:00 p.m. and 10:00 p.m., but the citation was issued at 8:35 p.m. White maintains that this implied that she was not the bartender who had sold the confidential informant the alcoholic beverage. But the confidential informant later explained that she was not wearing a watch and that it was nighttime when she had entered the bar. Additionally, the informant, as well as Officer Sulton, identified White as the bartender who had served the informant. Given that White admitted that she was the only bartender on duty that night, we conclude that there was sufficient evidence to convict White of selling liquor to a minor.

We also hold that White’s conviction was not against the manifest weight of the evidence. White argues that Officer Sulton could not have observed White selling the informant an alcoholic beverage through the front window because the “neon

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<sup>3</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

<sup>4</sup> *Id.*

<sup>5</sup> *Martin*, *supra*.

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signs and the darkness of the interior of the bar ma[d]e it nearly impossible to see the inside of the bar from the street.” Even if Sulton’s view was not perfectly clear, given that the informant identified White as the bartender who had served her and the fact that White admitted that she was the only bartender on duty that night, we cannot say that the trial court lost its way and created a manifest miscarriage of justice.

Therefore, the two assignments of error are overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on February 20, 2008  
per order of the Court \_\_\_\_\_.  
Presiding Judge