

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

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| STATE OF OHIO, | : | APPEAL NOS. C-150269 |
| | | C-150270 |
| Plaintiff-Appellee, | : | C-150271 |
| | | TRIAL NOS. 14CRB-12451A |
| vs. | : | 14CRB-12451B |
| | | 14CRB-12451D |
| LLOYD JORDAN, | : | |
| | | <i>JUDGMENT ENTRY.</i> |
| Defendant-Appellant. | : | |

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Lloyd Jordan came upon the aftermath of an automobile accident on West McMillan St., and filmed his general observations of the scene of the accident, which included an inoperable SUV situated against a tree. Jordan got very close to the vehicle while filming the damaged SUV, which was in the process of being hooked-up to be towed. The tow truck driver told Jordan numerous times that he needed to move away from the vehicle. Jordan moved a few steps back, but then refused the tow truck driver's subsequent requests to move further back. The tow truck driver then requested the assistance of a police officer to move Jordan from the area. The police officer had been blocking a lane and directing traffic around the accident scene, and had to leave that position to confront Jordan.

The police officer requested several times that Jordan move to the other side of the street, and each time Jordan refused, claiming that he was in a safe area. The officer told Jordan that he would arrest him for obstructing official business if he did

not move. Jordan continued to refuse, and threatened to take the officer to court if the officer arrested him, and demanded that the officer contact his commanding officer.

The officer placed Jordan under arrest. A struggle ensued, which resulted in Jordan and the officer falling to the ground. Another officer, who had a police explorer in her vehicle and who was completing paperwork regarding the accident, had to leave her vehicle to aid in the arrest. Jordan shouted numerous times that he was being illegally arrested, that he had already gone to court on this multiple times, and that the officers would lose their jobs. Once under arrest and handcuffed, Jordan refused to walk to the police vehicle, forcing the officers to pick him up and carry him to the police vehicle.

Jordan was charged under R.C. 2917.13(A)(1) for hampering the tow truck driver in his removal of the SUV at the scene of the accident, R.C. 2921.33 for resisting arrest, R.C. 2917.11 for disorderly conduct, and R.C. 2921.31 for obstructing official business. Jordan pleaded not guilty and the case proceeded to a bench trial. The state presented testimony from both police officers and the tow truck driver. At the conclusion of the state's case-in-chief, the trial court dismissed the charge for disorderly conduct. At the end of the trial, the trial court found Jordan guilty of the remaining charges. The trial court sentenced him to six months' community control, but stayed the sentence pending appeal. Jordan timely appealed.

Jordan asserts two assignments of error, which we will address out of order. In his second assignment of error, Jordan alleges that R.C. 2917.13(A)(1) is unconstitutionally vague in violation of the Fifth and Fourteenth Amendments to the United States Constitution because the word "hamper" is not defined in the Ohio Revised Code. Every term in a statute is not required to be defined, however, and

undefined terms are to be accorded their common everyday meanings. *See State v. Dorso*, 4 Ohio St.3d 60, 62, 446 N.E.2d 449 (1983).

Regardless, Jordan did not raise this issue before the trial court. The failure to raise an issue concerning the constitutionality of a statute or its application at the trial court level “constitutes a waiver of such issue and a deviation from this state’s orderly procedure, and therefore need not be heard for the first time on appeal.” *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus; *see State v. Flannery*, 1st Dist. Hamilton No. C-140426, 2015-Ohio-1360, ¶ 7. We may, in our discretion, review the issue of the statute’s constitutionality for plain error or where the rights and interests involved may warrant review. *In re M.D.*, 38 Ohio St.3d 149, 150, 527 N.E.2d 286 (1988), syllabus; *Flannery* at ¶ 7. However, because this court ordinarily enforces the waiver doctrine unless there is an extraordinary reason to disregard it, and no extraordinary reasons exist in this case, we decline to address this argument. *See Flannery* at ¶ 7. Jordan’s second assignment of error is overruled.

In his first assignment of error, Jordan challenges the weight and sufficiency of the evidence adduced to support his convictions. These challenges are without merit.

In reviewing the record for sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. For a manifest weight claim, “[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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.” See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). The appellate court’s discretionary power to grant new trials should be used only in exceptional cases where the evidence weighs heavily against conviction. See *Thompkins* at 387; *Martin* at 175.

The crime of misconduct at an emergency is defined in R.C. 2917.13(A)(1), which states that “no person shall knowingly * * * hamper the lawful operations of any * * * authorized person, engaged in the person’s duties at the scene of a[n] * * * accident.” The purpose of this statute is to control “bystanders and curiosity seekers” in order to permit authorized personnel “to perform their duties with the utmost efficiency * * *.” *State v. Bryant*, 9th Dist. Lorain No. 09CA009736, 2011-Ohio-4555, ¶ 22 quoting R.C. 2917.13, Legislative Service Commission Note (1973). Here, Jordan’s video demonstrated and witnesses’ testimony corroborated that the tow truck driver was in the process of removing an SUV from an accident scene. Jordan’s refusal to move from the area, despite the tow truck driver’s numerous requests, prevented the tow truck driver from completing his duties.

R.C. 2921.31, obstructing official business, provides that “[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.” A violation of this statute requires an affirmative act, and a person cannot be guilty by doing nothing or failing to act. *State v. Collier*, 1st

Dist. Hamilton No. C-140576, 2015-Ohio-3891, ¶ 8; *State v. Wellman*, 173 Ohio App.3d 494, 2007-Ohio-2953, 879 N.E.2d 215, ¶ 10 (1st Dist.).

Jordan argues that he did not affirmatively act, only that he refused to comply with the officer's orders. However, the video evidence and witnesses' testimony demonstrate that Jordan's actions went beyond a mere refusal to move—Jordan walked onto an obvious accident scene with a police presence, and he ignored and refused to follow the orders of authorized personnel. He watched as police aid was requested and as a police officer left his post to address the situation, and then continuously refused the officer's demands. Compare *City of Lakewood v. Abdelhaq*, 8th Dist. Cuyahoga No. 100857, 2014-Ohio-4572. The officer had to leave his assigned post, directing traffic around the scene of the accident, to move Jordan to a safe location away from the tow truck. See *Wellman* at ¶ 18. Another officer also left her cruiser, where she was completing her report of the accident and other necessary paperwork, to assist the arresting officer after Jordan refused to move away from the tow truck. At trial, the state also presented evidence of Jordan's motive through his recorded statements, which included threats and admissions, as well as a prior \$40,000 settlement from a fact-similar situation.

Resisting arrest is defined in R.C. 2921.33, which states, "no person, recklessly or by force, shall resist or interfere with a lawful arrest." An arrest is lawful if the surrounding circumstances would give a reasonable police officer cause to believe that an offense has been or is being committed. *State v. Matthews*, 1st Dist. Hamilton No. C-140663, 2015-Ohio-5075, ¶ 8; see *State v. Thompson*, 116 Ohio App.3d 740, 743, 689 N.E.2d 86 (1st Dist.1996). The facts of this case illustrate an obvious instance where a reasonable police officer believed that Jordan had engaged in misconduct at an emergency and obstruction of official business, both of which are

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arrestable offenses. R.C. 2917.13(A)(1) and 2921.31. Testimony from the officers and the tow truck driver indicate that Jordan struggled during the arrest, wrapping his arms around his body and refusing to walk, which resulted in officers carrying him to the police cruiser.

Here, the state presented substantial, credible evidence from which the trier of fact could have reasonably concluded the elements of each offense had been proven beyond a reasonable doubt. And our review of the record fails to persuade us that the trial court, acting as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that Jordan's convictions must be reversed and a new trial ordered. We overrule Jordan's first assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DEWINE, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on March 23, 2016
per order of the court _____.

Presiding Judge