

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

STATE OF OHIO,	:	APPEAL NO. C-230659
	:	TRIAL NO. C-23CRB-9509
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DAARINA SMITH,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In June 2023, defendant-appellant Daarina Smith drove her friend, Jennifer Phelps, to Harvest Home Park for a community outreach event with over 40 people in attendance. While at the event, Ms. Smith noticed Akeisha Washington sitting on a nearby park bench. Ms. Smith and Ms. Washington had been friends since childhood, but they were no longer on good terms because of a disputed cell phone payment. Ms. Smith approached Ms. Washington, and the chance encounter quickly escalated into a loud, heated argument.

The exact contents of the argument were disputed at trial. Ms. Smith acknowledged that she said, “Cuz really I feel like beating your ass.” She also threatened to sue Ms. Washington. Ms. Washington, on the other hand, claimed Ms. Smith said both “I should beat your ass, \$750 worth” and “I’m going to beat your ass.” And Ms. Phelps—a witness for the defense—stated that Ms. Smith said, “I feel like whipping your ass for the \$750.” Both Ms.

Smith and Ms. Washington claimed that the other threatened to shoot. Allegedly prompted by this threat, Ms. Smith testified that she invited Ms. Washington to fight: “What’s wrong with your hands? Why do you have [to] shoot me?” And Ms. Washington testified that Ms. Smith was looking in her purse for a gun, but she failed to share this piece of information with Cheviot Police Sergeant Ian Courtney, who was present at the community event and handled Ms. Washington’s police report.

Ms. Smith was charged with aggravated menacing, a first-degree misdemeanor, in violation of R.C. 2903.21. Following a bench trial in December 2023, the court determined that the state did not meet its burden of proving aggravated menacing. Instead, it found Ms. Smith guilty of the lesser included offense of disorderly conduct, a minor misdemeanor, in violation of R.C. 2917.11(A)(1), which provides: “No person shall recklessly cause inconvenience, annoyance, or alarm to another by * * * [e]ngaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior.” And it imposed a \$100 fine.

Ms. Smith now disputes her conviction, lodging both sufficiency and manifest weight challenges. When this court reviews a sufficiency challenge, we ask “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.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. But when reviewing whether a conviction runs counter to the manifest weight of the evidence, we sit as the “thirteenth juror.” *State v. Thompkins*, 78 Ohio St.3d 380, 388, 678 N.E.2d 541 (1997). “[W]e review the evidence, the credibility of witnesses, and the entire record.” *State v. Bryant*, 2022-Ohio-4108, 201 N.E.3d 482, ¶ 10 (1st Dist.), citing *Thompkins* at 388. We will not reverse the conviction unless the trial court “ ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’ ”

Thompkins at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

Here, Ms. Smith and Ms. Washington presented two different versions of the verbal altercation. But it is undisputed that the women engaged in a loud verbal altercation where, at minimum, Ms. Smith threatened, “I feel like beating your ass” and invited Ms. Washington to fight with her hands. And even “when there is conflicting evidence presented at trial, we will not find that a conviction is against the manifest weight of the evidence where a trier of fact reasonably weighed the conflicting evidence.” *State v. Shinholster*, 1st Dist. Hamilton Nos. C-230457 and C-230436, 2024-Ohio-1606, ¶ 23, citing *State v. Vandergriff*, 1st Dist. Hamilton No. C-200282, 2021-Ohio-3230, ¶ 9.

Viewing the conviction through both sufficiency and manifest weight lenses respectively, we conclude that the trial reasonably found the essential elements of disorderly conduct proven beyond a reasonable doubt and that it did not clearly lose its way or create a manifest miscarriage of justice in finding Ms. Smith guilty of disorderly conduct. Therefore, we overrule Ms. Smith’s sole assignment of error and affirm the judgment of the trial court.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App.R. 27.

BOCK, P.J., BERGERON and KINSLEY, JJ.

To the clerk:

Enter upon the Journal of the Court on 6/7/2024 per Order of the Court.

By: _____
Administrative Judge