

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

STATE OF OHIO,	:	APPEAL NO. C-150544
Plaintiff-Appellee,	:	TRIAL NO. 15CRB-1247
vs.	:	<i>JUDGMENT ENTRY.</i>
VERNISHA FINCH,	:	
Defendant-Appellant.	:	

We consider this appeal 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.

Vernisha Finch appeals from her conviction for assault in violation of R.C. 2903.13. Finch was charged with assaulting Jerica Black, the mother of her boyfriend's child, when Black arrived at the home of Finch's mother for the exchange of the child.

At trial, Black testified that Finch had punched her in the face. Black's aunt, who had accompanied Black when she retrieved her child, corroborated her testimony. The police officer investigating the offense photographed Black's cut lip, and that photograph was admitted into evidence at trial.

In her defense, Finch presented the testimony of her mother and sister. Both testified that Finch was not present at the exchange of the child and did not assault Black. The jury disbelieved them and found Finch guilty of the assault.

We overrule the first assignment of error. First, upon the evidence adduced at trial, reasonable minds could have reached different conclusions as to whether each

element of the offense of assault had been proved beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979). And second, we find nothing in the record of the proceedings below to suggest that the jury, in resolving the conflicts in the evidence adduced on the charged offense, lost its way or created such a manifest miscarriage of justice as to warrant the reversal of Finch's conviction. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We note that the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

In her second assignment of error, Finch argues that a new trial is required because her constitutional right to a public trial was violated. *See State v. Lane*, 60 Ohio St.2d 112, 119, 397 N.E.2d 1338 (1979); *State v. Sanders*, 130 Ohio App.3d 92, 96, 719 N.E.2d 619 (1st Dist.1998). The record reflects that the main door to the courtroom was inadvertently locked for part of the trial. But, as the trial court noted, the public had access to the courtroom for the entire trial from another door, and the main door was unlocked as soon as the matter was brought to the attention of the court and parties. Therefore, Finch has failed to demonstrate a violation of her right to a public trial. Accordingly, we overrule the second assignment of error.

In her third assignment of error, Finch contends that she was denied the effective assistance of trial counsel in violation of her constitutional rights. To prevail on a claim of ineffective assistance of counsel, an appellant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that this deficient performance prejudiced her. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

According to Finch, defense counsel's performance was deficient because counsel failed to timely and effectively subpoena Natasha McCoy. But to obtain a reversal on the ineffective assistance of counsel based on a failure to subpoena a witness, an appellant must show that the testimony of the witness would have assisted the defense. *State v. Reese*, 8 Ohio App.3d 202, 203, 456 N.E.2d 1253 (1st Dist.1982). Here, Finch merely speculates about the content of McCoy's testimony and has thus failed, on this record, to show that counsel's performance was deficient.

Finch also contends that counsel was ineffective for failing to object to the locking of the main door to the courtroom or to move for a dismissal due to that circumstance. But counsel's performance was not deficient for failing to object, because the situation had already been corrected when counsel learned of it, or for failing to move for dismissal, because that motion would not have been successful as the public had another means of access to the courtroom for the entire trial.

Because Finch has failed to demonstrate her ineffective-assistance-of-counsel claim, we overrule the third assignment of error.

Accordingly, we affirm the trial court's judgment.

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.

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

To the clerk:

Enter upon the journal of the court on May 25, 2016
per order of the court _____
Presiding Judge