

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

STATE OF OHIO,	:	APPEAL NO. C-160429
Plaintiff-Appellee,	:	TRIAL NO. C-15CRB-12963
vs.	:	<i>JUDGMENT ENTRY.</i>
ZACHARY CHEEK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Zachary Cheek appeals his conviction for arson, following a jury trial. Cheek was sentenced as appears of record. On appeal, he raises a single assignment of error in which he argues that his conviction was against the manifest weight of the evidence.

When addressing a manifest-weight-of-the-evidence challenge, this court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine 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).

The state presented evidence that Cheek had confessed that he had used a lighter to light a cardboard box on fire, which had been located at the top of some garbage cans outside a home. He then drove around the block in his car. As he returned to the scene, he took a cell phone video of the fire. He then exited from his vehicle to alert the homeowner about the fire, which had spread from the garbage cans to a nearby fence and garage.

Cheek took a garden hose from the homeowner's backyard and sprayed the fire until he handed the hose off to a neighbor. The fire department arrived shortly thereafter and extinguished the fire. Cheek stayed during their investigation of the fire. He provided police with a statement. He also provided the fire department with his cell phone video of the fire. Cheek's behavior at the scene caused the responding firefighters and police officer to suspect that Cheek had set the fire. Cheek was transported to the police station for questioning.

At first, Cheek told police that his friend, Joshua Jay, had started the fire, but when police brought Jay to the station, Jay told them he had been at home at the time of the fire. He showed police electronic messages on his phone that supported his statement. When police confronted Cheek with the messages and Jay's statement, Cheek confessed to setting the fire. He then gave police a written statement admitting he had set the fire. Shortly thereafter, a police officer drove Cheek and Jay to Cheek's car. Cheek gave the officer permission to search his vehicle, and the officer found a lighter inside. A nationally-certified fire investigator testified that his examination of the damage to the garbage cans and surrounding area led him to conclude that the fire had been intentionally set in the manner that Cheek had described in his statement.

Cheek and Jay testified in Cheek's defense. Cheek testified that his confession had been coerced and that the police had suggested what he put in his written statement, including that he had lit a cardboard box on fire. Cheek maintained that "the only thing [he] had to do with the fire * * * was to put it out." Cheek further testified that he did not know who had set the fire.

The police officer who interviewed Cheek testified at trial. He maintained that Cheek had confessed of his own accord after being confronted with Jay's statements and his electronic messages with Cheek. The officer testified that Cheek's statement was the first time he had heard a cardboard box had been used to start the fire. He further testified that the only thing he had asked Cheek to include in his written statement was that Cheek had voluntarily provided the video of the fire to the firefighters at the scene.

Cheek presented a different version of events at trial than he had provided to the police. The jury, as the trier of fact, was in the best position to judge Cheek's credibility. The jury chose to believe the testimony of the state's witnesses and Cheek's prior statement to police, and not Cheek's trial testimony. After reviewing the record, we cannot conclude that the jury lost its way and created such a manifest miscarriage of justice that Cheek's conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. We, therefore, overrule Cheek's sole assignment of error and affirm the judgment of the trial court.

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

MOCK, P.J., MILLER and DETERS, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on May 12, 2017

per order of the court _____.

Presiding Judge