

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

STATE OF OHIO.	:	APPEAL NO. C-110447
Plaintiff-Appellee,	:	TRIAL NO. 11CRB-6956
vs.	:	<i>JUDGMENT ENTRY.</i>
JACQUELINE FLOYD,	:	
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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Jacqueline Floyd appeals her conviction for theft, raising two assignments of error for our review. Floyd’s conviction arises from an incident at a Kroger grocery store where a Kroger security officer saw Floyd remove a cellular telephone adapter from its packaging and place the empty package in the candy aisle. The security officer called police, and an officer searched Floyd, Floyd’s daughter, and Floyd’s grandchildren, but the adapter was not found.

We will address together Floyd’s assignments of error, which challenge the sufficiency and weight of the evidence adduced to support her conviction. Specifically, Floyd argues that the security officer testified that he had seen Floyd open the adapter package and remove the adapter, but the police officer’s written report had not contained this detail and neither had the security officer’s written report. Floyd also argues that because the trial court chose to believe the security officer’s testimony over

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that of Floyd, and the trial court stated on the record that, “[e]veryone who gets on the stand starts at an even place[,]” the trial court did not apply the correct burden of proof.

By finding Floyd guilty, the trial court chose to believe the security officer’s testimony over that of Floyd, despite the officer’s omission of an underlying fact in contemporaneous written reports. The trier of fact, in this instance the court, was in the best position to consider witness credibility and was entitled to afford more credibility to the officer’s testimony. *State v. Gorrasi*, 1st Dist. No. C-090292, 2010-Ohio-2875, ¶ 12. Moreover, Floyd’s argument that the trial court applied an incorrect burden of proof is without merit. Therefore, Floyd’s assignments of error are overruled on the authority of *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541 and *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

The judgment of the trial court is affirmed.

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.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on March 21, 2012

per order of the court _____.
Presiding Judge