

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

STATE OF OHIO,	:	APPEAL NO. C-130055
Plaintiff-Appellee,	:	TRIAL NO. 12CRB-33356
vs.	:	<i>JUDGMENT ENTRY.</i>
BRANDY THOMAS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. 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.

Following a bench trial, defendant-appellant Brandy Thomas appeals her conviction for persistent disorderly conduct, in violation of R.C. 2917.11(A) and 2917.11(E)(3)(a), punishable as a fourth-degree misdemeanor. A Cincinnati police officer, responding to Tiffany Johnson's telephone call for assistance, found Thomas engaged in a dispute with her neighbor Johnson. Incensed that the officer would not arrest Johnson, Thomas continued to shout vulgarities at Johnson and to threaten to fight her, despite the officer's repeated entreaties to Thomas to calm herself. Numerous other persons, disturbed by the altercation, gathered at the scene.

The trial court found Thomas guilty and imposed a \$10 fine, plus court costs. Thomas appealed.

In three interrelated assignments of error, Thomas contests the weight and the sufficiency of the evidence adduced to support her conviction. Our review of the entire 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 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 adduced ample evidence, including the testimony of the arresting officer, that Thomas, shouting and threatening to fight Johnson and refusing to calm herself, persisted in recklessly causing inconvenience, annoyance, and alarm to others. As the weight to be given the evidence and the credibility of the witnesses were primarily for the trier of fact to determine, the trial court, in resolving conflicts in the testimony, could properly have found Thomas guilty of the charged offense and thus did not lose its way. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The third assignment of error is overruled.

The record also reflects substantial, credible evidence from which the trial court could have reasonably concluded that the state had proved all elements of the charged crime beyond a reasonable doubt. *See R.C. 2917.11(A) and 2917.11(E)(3)(a); see also State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 36. The second assignment of error is overruled.

Thomas next argues that because “there was a total absence of any evidence of the date of the offense, rendering the state’s proof inadequate to establish compliance with the applicable limitations period,” the trial court erred in denying Thomas’s motion for a judgment of acquittal made at the conclusion of the state’s case.

Her argument is a misstatement of the facts demonstrated in the record and of the state of the law. First, the arresting officer testified that the events which resulted in Thomas’s conviction occurred on October 24, 2012. Second, the date of the offense was not an element of the offense. *See State v. Gingell*, 7 Ohio App.3d 364, 455 N.E.2d 1066 (1st Dist.1982). Since reasonable minds could have reached different conclusions as to whether each element of the crime charged had been proven beyond a reasonable doubt,

the trial court properly denied Thomas's motion for a judgment of acquittal. *See* Crim.R. 29; *see also State v. Bridgeman*, 55 Ohio St.2d 261, 381 N.E.2d 184 (1978). The first assignment of error is overruled.

In her final assignment of error, Thomas argues that her trial counsel was ineffective for failing to rest at the conclusion of the state's case, and for then presenting evidence of the date of the offense from her first witness, Harry Mulholland. Since identifying the date of the offense was not an element of the state's proof, there were no acts or omissions by trial counsel in questioning Mulholland that deprived Thomas of a substantive or procedural right, or that rendered the trial fundamentally unfair. *See Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993); *see also Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), paragraph two of the syllabus. The fourth assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

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.

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

To the clerk:

Enter upon the journal of the court on September 13, 2013

per order of the court _____.
Presiding Judge