

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

STATE OF OHIO,	:	APPEAL NO. C-150665
	:	TRIAL NO. B-1402297
Plaintiff-Appellee,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
ALICIA BARHAM,	:	
	:	
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.

Following a bench trial, defendant-appellant Alicia Barham appeals her conviction for endangering her 12-year-old son, A.C., in violation of R.C. 2919.22(A). Throughout the summer of 2014, A.C. would spend long periods of time with his friend, the son of Belinda Hughes. A.C. would arrive at the Hughes home hungry. He was often wearing the same unwashed clothes. Hughes fed A.C., let him shower, and provided him with clean clothes. While their sons were friends, Barham and Hughes were strangers.

After A.C. had stayed with Hughes for a four-day period without any contact from Barham, Hughes contacted the Forest Park police for help in locating Barham. Investigating officers could not reach her at the telephone numbers given by A.C. and his uncle. They visited Barham's last known address and found the home vacant and vandalized.

When Barham was finally located she was charged with child endangering. The trial court found Barham guilty, denied her post-trial motions, and sentenced her to one year of community control. Barham appealed.

In two interrelated assignments of error, Barham 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 two investigating officers and Hughes that Barham had failed to take any steps to ensure A.C.'s care and protection for long periods of time. 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 Barham 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 second 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, including that Barham had recklessly created a substantial risk to the health and safety of her son by violating her duty of care and support. *See R.C. 2919.22(A)*; *see also State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 36. The first assignment of error is overruled.

Barham next argues that the trial court abused its discretion by permitting an investigating police officer to refresh his recollection during his testimony without making

a proper foundation in contravention of Evid.R. 612. *See State v. Ballew*, 76 Ohio St.3d 244, 254, 667 N.E.2d 369 (1996).

The record reveals that Barham's trial objection challenged only whether the officer had been reading from a written report rather than employing it to refresh his recollection. *See Evid.R. 103(A)(1)*. Since the trial court found that the officer had not been reading from the report, we can find no basis to substitute our judgment for that of the trial court and conclude that it erred in permitting the officer to testify from his refreshed memory. *See Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990); *see also State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14; *State v. Goff*, 82 Ohio St.3d 123, 137, 694 N.E.2d 916 (1998). The third assignment of error is overruled.

Therefore, 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.

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

To the clerk:

Enter upon the journal of the court on October 19, 2016
per order of the court _____.
Presiding Judge