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

STATE OF OHIO,	:	APPEAL NOS. C-190226 C-190227
Plaintiff-Appellee,	:	C-190228 TRIAL NOS. 19-CRB4662A,B,C
vs.	:	
EARL FLOWER, JR.,	:	*JUDGMENT ENTRY.*
Defendant-Appellant.	:	

We consider these appeals 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 Earl Flower, Jr., appeals convictions from the Hamilton County Municipal Court. The genesis of these convictions lies with an incident that transpired between Mr. Flower and his uncle, Steve Howe, after Mr. Howe told Mr. Flower to vacate premises owned by Mr. Howe and occupied by Mr. Flower's grandmother. According to Mr. Howe and another witness, this prompted Mr. Flower to yank a nearby yard sign out of the ground and begin brandishing and swinging its metal stake "[w]thin inches" of Mr. Howe's face, as Mr. Flower uttered threatening remarks.

Attempting to diffuse the situation, Mr. Howe testified that he eventually left the scene. Encountering local police nearby, Mr. Howe explained the situation and the police returned to the house with him. Arriving at the scene, Officer Justin Gottmann

encountered Mr. Flower in the street, where he had stopped traffic and was "yelling and screaming outside the driver's side window" of a vehicle. Mr. Flower was subsequently arrested and charged with possessing drug abuse instruments under R.C. 2925.12, aggravated menacing, R.C. 2903.21, and disorderly conduct, R.C. 2917.11(A). Mr. Flower pleaded guilty to the possession of a drug abuse instrument charge, and was subsequently convicted after a bench trial on the aggravated menacing and disorderly conduct charges.

On appeal, Mr. Flower raises a single assignment of error, challenging his convictions for aggravated menacing and disorderly conduct as contrary to the manifest weight of the evidence. We review challenges to the manifest weight of the evidence by examining the entire record, weighing the evidence and all reasonable inferences, considering the credibility of the witnesses, and determining whether in resolving conflicts in the evidence, the trier of fact clearly lost its way, resulting in a manifest miscarriage of justice. *See State v. Ward,* 1st Dist. Hamilton Nos. C-180350, C-180387, and C-180388, 2019-Ohio-4148, ¶ 30, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Aggravated menacing prohibits "knowingly caus[ing] another to believe that the offender will cause serious physical harm to the person or property of the other person[.]" R.C. 2903.21(A). On appeal, Mr. Flower takes issue with Mr. Howe's credibility, challenging the genuineness of his belief that Mr. Flower was going to cause him serious physical harm. Mr. Flower points to Mr. Howe's reaction to Mr. Flower's behavior, including his admission to laughing during the incident. But Mr. Howe subsequently explained that he reacted this way because "[he] didn't know how else to

deal with a drug addict," and he reiterated twice that he believed Mr. Flower was going to cause him serious physical harm.

When reviewing a weight of the evidence challenge, we are reminded that the trier of facts, here the judge, was in the best position to judge the credibility of the witnesses. *See State v. Landrum*, 1st Dist. Hamilton No. C-150718, 2016-Ohio-5666, ¶ 15 (upholding aggravated menacing conviction under sufficiency and weight of the evidence challenges where "the victim's testimony stating that she did not expect [the defendant] to 'actually use' the knife * * * [did] not overshadow her consistent assertions that she * * * felt threatened[.]"); *State v. Carson*, 1st Dist. Hamilton No. C-180336, 2019-Ohio-4550, ¶ 19-20 (noting that the trier of facts is in the best position to judge the credibility of witnesses); *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus ("[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts."). Thus, the judge was free to believe all, none, or part of Mr. Howe's testimony, and some minor inconsistencies in the testimony do not compel reversal. *See State v. Curry*, 1st Dist. Hamilton No. C-190107, 2020-Ohio-1230, ¶ 18-19 (noting that inconsistencies in the witness testimony do not require a reversal on weight of the evidence grounds).

As to the disorderly conduct conviction, R.C. 2917.11(A)(4) prohibits recklessly causing inconvenience, annoyance, or alarm to another by "[h]indering or preventing the movement of persons on a public street, * * * so as to interfere with the rights of others[.]" Here, Mr. Flower takes issue with evidence demonstrating that he caused "inconvenience." While Mr. Flower concedes that Officer Gottmann's testimony allows the court to infer inconvenience, he contests the strength of the evidence. But again,

"[t]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *DeHass* at paragraph one of the syllabus.

On appeal, Mr. Flower essentially urges us to adopt his interpretation of the evidence in which the car's occupants were simply good Samaritans, not inconvenienced, but rather inclined to help a stranger by offering him money. But the state presented evidence that (1) the car's occupants did not stop of their own accord, (2) Mr. Flower yelled and screamed at them, (3) Mr. Flower asked them for money, and (4) police intervention, resulting in several minutes of struggle, was necessary to resolve the situation. *See State v. Amireh,* 2016-Ohio-1446, 62 N.E.3d 672, ¶ 13 (4th Dist.) (noting that all the testimony together demonstrated that protesters recklessly caused inconvenience, annoyance, and alarm to motorists by hindering traffic such that the trier of fact did not lose its way); *State v. Walker*, 5th Dist. Stark No. 2013 CA 00204, 2014-Ohio-3693, ¶ 23 (noting that jury could have rightly inferred that defendant's behavior caused inconvenience, annoyance, or alarm based on defendant's conduct and interaction with others). Just because the court did not credit the evidence as Mr. Flower wished does not render his conviction against the manifest weight of the evidence. *See State v. Damen*, 1st Dist. Hamilton No. C-030814, 2004-Ohio-4363, ¶ 10, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983) ("The discretionary power to reverse should be invoked only in exceptional cases 'where the evidence weighs heavily against the conviction.' ").

In sum, neither Mr. Flower's conviction for aggravated menacing, nor his conviction for disorderly conduct was against the manifest weight of the evidence. We therefore overrule his sole assignment of error and affirm the judgment of the trial

court. Finally, as Mr. Flower raised no assignment of error to his conviction under R.C. 2925.12 ("Possessing drug abuse instruments"), the appeal as to that charge shall be dismissed.

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., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on May 27, 2020,
per order of the court_____.

Presiding Judge