

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

STATE OF OHIO,	:	APPEAL NO. C-170166
Plaintiff-Appellee,	:	TRIAL NO. 16CRB-9342B
vs.	:	<i>JUDGMENT ENTRY.</i>
DOROTHEA WEAVER,	:	
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, Dorothea Weaver was convicted of resisting arrest, in violation of R.C. 2921.33(A). In a single assignment of error, she challenges the manifest weight of the evidence supporting her conviction. We affirm.

Two police officers testified that when they arrested Weaver for trespassing, she pulled away from them as they attempted to place her arms behind her and to put handcuffs on her wrists. Weaver’s struggling prevented the officers from handcuffing her while she was standing, so one of the officers used a balance displacement technique to cause her to go to the ground. Weaver continued to pull away and kick her feet at the officers, so they tried to hold her legs down. Within a short time, the officers were able to place handcuffs on Weaver.

Weaver testified that she was handcuffed before being told by the officers to sit on the ground. She said that she complied and sat down. According to Weaver, the

handcuffs were too tight, so she rolled onto her stomach from her seated position. She said that she kicked at the officers while she was on the ground because she felt they were using excessive force.

In finding Weaver guilty of resisting arrest, the trial court explained that it believed the officers' version of the events. As the trier of fact, the court was in the best position to judge the credibility of the officers and of Weaver. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus; *State v. Railey*, 2012-Ohio-4233, 977 N.E.2d 703, ¶ 14 (1st Dist.). Although Weaver argues that her resistance was necessary to protect herself from the officers' use of force, the trial court was free to believe that any force used by the officers was only in response to Weaver's conduct in resisting the arrest, and to conclude that Weaver failed to carry her burden of proof for the affirmative defense of excessive force. *See Columbus v. Purdie*, 10th Dist. Franklin Nos. 84AP-127 and 84AP-128, 1984 WL 6005, *3 (Nov. 29, 1984); *Cleveland v. Murad*, 84 Ohio App.3d 317, 323, 616 N.E.2d 1116 (8th Dist.1992). The conviction was not against the manifest weight of the evidence. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Weaver's sole assignment of error is overruled, and the trial court's judgment 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.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on February 28, 2018

per order of the court _____
Presiding Judge