

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

STATE OF OHIO,	:	APPEAL NO. C-170282
	:	TRIAL NO. 14CRB-21816
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JAYDRA MCLENDON,	:	
	:	
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 Jaydra McLendon was convicted of aggravated menacing, a misdemeanor of the first degree, in violation of R.C. 2903.21. During a “road-rage” incident, McLendon displayed her gun to another driver, she contends, in self-defense. She now appeals her conviction, bringing forth three assignments of error. Finding no merit in the assignments, we affirm the trial court’s judgment.

In her first assignment of error, McLendon contends that the trial court erred in finding her guilty of aggravated menacing. Specifically, she argues that the state failed to prove that the victim, Tenesha Hardridge, had believed she was in danger of serious bodily harm. *See* R.C. 2903.21(A). But Hardridge testified that when McLendon had waved the gun in her direction she had been “scared” and had

believed that McLendon would fire the gun simply because McLendon had “the nerve” to display the gun in “broad daylight” towards a car that had children in it. Hardridge’s teenaged daughter testified that she “ducked down” when McLendon displayed the gun and that two other children in the back seat of the car screamed. Viewing the evidence in a light most favorable to the state, we hold that there was sufficient evidence presented to show that Hardridge had believed that McLendon would cause serious physical harm to her or her children. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 491 (1991), paragraph two of the syllabus.

Next, we do not find any merit in McLendon’s argument that her conviction was against the manifest weight of the evidence. The record does not demonstrate this is a case of “extraordinary circumstances” where it is necessary to correct a manifest miscarriage of justice. *See State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). The trial judge, who was in the best position to judge the witnesses’ credibility, was free to believe Hardridge’s testimony that she had been scared and that she had believed that McLendon would use the gun. *See State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116.

With respect to McLendon’s remaining arguments under this assignment, we hold that the trial court employed the correct standard in finding McLendon guilty of aggravated menacing, and that the trial court did not err in failing to consider McLendon’s self-defense claim when the evidence showed that McLendon was at least partly at fault for creating the altercation between Hardridge and her. *See State v. Williford*, 49 Ohio St.3d 247, 551 N.E.2d 1279 (1990).

Because the trial court properly found McLendon guilty beyond a reasonable doubt of aggravated menacing, we overrule the first assignment of error.

In her second assignment of error, McLendon maintains she was denied a fair trial because of the ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, McLendon must show that counsel's representation fell below an objective standard of reasonableness and that she was prejudiced by counsel's performance. *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to demonstrate prejudice, McLendon must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different. *Bradley* at 143. After reviewing the record, we hold that McLendon has not demonstrated that her counsel's performance fell below an objective standard of reasonableness. We overrule her second assignment of error.

In her final assignment of error, McLendon maintains that the trial court erred by denying her motion for leave to file a motion for a new trial. We review the denial of leave to file a motion for a new trial under an abuse-of-discretion standard. *State v. Willis*, 6th Dist. Lucas No. L-06-1244, 2007-Ohio-3959, ¶ 12. An abuse of discretion connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

Under Crim.R. 33(B), a motion for a new trial, on grounds other than newly discovered evidence, must be filed within 14 days after the verdict. One exception to this rule is if a party is unavoidably prevented from filing her motion for a new trial. A party is "unavoidably prevented" from filing a motion for a new trial "if the party had no knowledge of the existence of the ground supporting the motion and could not have learned of that existence within the time prescribed for filing the motion in the exercise of reasonable diligence." *State v. Walden*, 19 Ohio App.3d 141, 483

N.E.2d 859 (10th Dist.1984). Even if the defendant can establish that she was unavoidably prevented from filing a timely motion for a new trial, the trial court must still determine if the motion was filed within a reasonable time, under the circumstances. *See State v. Reed*, 2d Dist. Montgomery No. 26526, 2015-Ohio-3051, ¶ 25.

The record is devoid of evidence demonstrating that McLendon was unavoidably prevented from moving for a new trial within a reasonable time. Accordingly, we cannot say that the trial court abused its discretion in denying McLendon's motion for leave to file a motion for a new trial.

The third assignment of error is overruled, and 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., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on March 7, 2018
per order of the court _____.
Presiding Judge