

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

STATE OF OHIO,	:	APPEAL NO. C-170510
	:	TRIAL NO. 17CRB-13839
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DONALD HOWARD,	:	
	:	
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.

Donald Howard appeals the judgment of the trial court convicting him, following a bench trial, of unauthorized use of a motor vehicle, in violation of R.C. 2913.03(A). We affirm the conviction.

At trial, the state presented evidence that Howard refused to return Bria Frazier’s car to her, despite her numerous demands. Instead, Howard demanded money from Frazier for the car’s return. At one point, Howard said he would bring the car to Frazier, but he showed up at her home without the car and told her that he wanted to “do something” with the car’s title. In a text message, Howard told Frazier, “F[***] you and that car. I taken that car back to them you pay for it[.]” When Howard failed to return the car, Frazier contacted the police.

According to Howard, Frazier had told him to “do what [he] had to do with the car,” so “[t]he car was given to a guy that we buy crack from.” He explained that when he said he had “taken that car back to them,” he simply meant to convey that the drug dealer had her car. The trial court found Howard’s testimony lacked credibility and found him guilty of the offense.

In a single assignment of error, Howard argues that his conviction was based upon insufficient evidence and was not supported by the manifest weight of the evidence. Specifically, he contends that the state failed to prove that he “used” a motor vehicle for purposes of R.C. 2913.03(A), which provides that “[n]o person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.” As we recently explained, “[t]he term ‘use’ is commonly defined as ‘[t]o employ for the accomplishment of a purpose; to avail oneself of.’ ” *State v. Smith*, 1st Dist. Hamilton No. C-170076, 2018-Ohio-927, quoting *Black’s Law Dictionary* 1776 (10th Ed.2014).

After reviewing all the evidence and reasonable inferences in the light most favorable to the prosecution, we hold that a rational trier of fact could have found beyond a reasonable doubt that Howard both used and operated the vehicle, having “taken that car back” and having availed himself of Frazier’s car without her consent. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Therefore, the conviction was based upon sufficient evidence. In addition, we cannot say that, in resolving conflicts in the evidence, the trier of fact clearly lost its way or created a manifest miscarriage of justice. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The weight of the evidence and the credibility of the witnesses were primarily for the trier of fact. *See State v. DeHass*, 10 Ohio St.2d

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230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Consequently, the conviction was not against the manifest weight of the evidence.

Therefore, we overrule the single assignment of error and affirm the judgment of the trial court.

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., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on July 25, 2018
per order of the court _____.
Presiding Judge