

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

STATE OF OHIO,	:	APPEAL NOS. C-170679
		C-170680
Plaintiff-Appellee,	:	TRIAL NOS. C-17CRB-28469A
		C-17CRB-28469B
vs.	:	
		<i>JUDGMENT ENTRY.</i>
STACY HUNTER,	:	
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 Stacy Hunter appeals her convictions for one count of criminal damaging for creating a risk of physical harm to Angela Samples while damaging her Kia Spectra, and one count of aggravated menacing for threatening her with a knife. Raising two assignments of error, Hunter argues that the evidence was insufficient to support the convictions, the convictions were against the manifest weight of the evidence, and the trial court erred by not conducting a restitution hearing. For the following reasons, we overrule each assignment of error and affirm the judgments of the trial court.

First, Hunter contends that her convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. The evidence presented by the state showed that Hunter used a liquor bottle to pound on the windshield, hood, and back window of Angela Samples's car while she was sitting in the driver's seat.

Hunter cracked the windshield, dented the hood, and broke the back window. Additionally, Hunter brandished a knife and threatened Samples, causing her to believe Hunter was going to stab her.

Hunter first argues that the state failed to prove that the broken back window posed a risk of physical harm to Samples because she was sitting in the front seat and was not harmed by the broken glass. Although she was not struck by the glass from the back window, she was put at risk of physical harm by the shattering of the window and the attempt to break the windshield. “[T]he harm to the automobile (pounding the windows and ultimately breaking at least one) created a risk of physical harm to a person (a passenger in the automobile) beyond a reasonable doubt.” *See State v. Stevens*, 1st Dist. Hamilton No. C-810902, 1982 WL 4796, * 1 (Oct. 27, 1982). Thus, the trier of fact could have found all the elements proven beyond a reasonable doubt. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

Hunter further argues that her testimony that the rear window was broken by a rock thrown by Samples was more credible than Samples’s testimony. The trial court heard both versions of the altercation and specifically found that Hunter’s testimony was not credible. Based on our review of the record, we cannot say that the court clearly lost its way and created such a manifest miscarriage of justice that we must reverse Hunter’s criminal damaging conviction and order a new trial. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

With respect to the aggravated-menacing conviction, Hunter contends that the knife found at the scene did not have a handle, and without the handle, it could not have been used to threaten Samples. However, there is no evidence in the record that the knife was missing its handle. Samples testified that Hunter brandished the knife and threatened her, the responding officer testified that the knife could potentially kill

someone, and Hunter admitted that she picked up the knife and pointed it at Samples. The state presented substantial, credible evidence from which to reasonably conclude that the state had proved all elements of the charged crime beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

Although Hunter testified that she did not threaten Samples when she brandished the knife, the trial court was in the best position to judge the credibility of the witnesses. *See DeHass* at paragraph one of the syllabus. After reviewing the record, we cannot conclude the trial court lost its way and created a manifest miscarriage of justice by choosing to accord more weight to the testimony of Samples than to Hunter's. *See Thompkins*, 78 Ohio St.3d 380 at 386, 678 N.E.2d 541. We, therefore, overrule the first assignment of error.

In her second assignment of error, Hunter argues that the trial court erred in failing to conduct a restitution hearing. Under R.C. 2929.18(A)(1), the trial court may order restitution based on estimates or receipts documenting the economic loss suffered by the victim as a result of the offense. If the offender disputes the amount, the trial court is required to hold a hearing on restitution. R.C. 2929.18(A); *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, ¶ 22.

Samples testified that she paid \$246 to repair the back window, and she obtained an estimate of \$1,898.13 to repair the hood and windshield. The receipt for the window replacement and the repair estimate were admitted into evidence. Although Hunter initially requested a hearing, and asked that Samples be required to produce a second estimate, she ultimately submitted the issue of restitution to the court and did not seek a continuance to obtain a second estimate. Accordingly, we overrule the second assignment of error and affirm the judgments of the trial court.

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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., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on December 14, 2018
per order of the court _____.

Presiding Judge