

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

STATE OF OHIO,	:	APPEAL NO. C-180408
	:	TRIAL NO. C-18CRB-9624
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ROBERT DONALDSON,	:	
	:	
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.

Defendant-appellant Robert Donaldson appeals from his conviction for resisting arrest. Raising two assignments of error, Donaldson contends that his trial counsel was ineffective for failing to file a timely jury request, and that the conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. For the following reasons, we affirm the trial court’s judgment.

First Donaldson contends that his counsel was ineffective for filing an untimely jury demand nine days before trial instead of ten days as required by Crim.R. 23(A). To prevail on an ineffective-assistance-of-counsel claim, Donaldson must demonstrate that counsel's performance fell below an objective standard of reasonableness, and he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

In order to demonstrate prejudice, Donaldson must establish that, but for counsel's errors, there is a reasonable probability that the result of trial would have been different. *Strickland* at 687; *State v. Bradley*, 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989). The defendant must demonstrate more than vague speculations of prejudice to show that counsel was ineffective. *State v. Otte*, 74 Ohio St.3d 555, 565, 660 N.E.2d 711 (1996). The failure to make an adequate showing on either prong is fatal to an ineffective-assistance-of-counsel claim. *See Strickland* at 697.

Donaldson claims that a jury would have been more likely to find him not guilty of resisting arrest. However, this assertion is merely speculative and insufficient to demonstrate prejudice. *See Otte* at 565. Because Donaldson cannot demonstrate prejudice, we need not determine whether the jury demand was timely. *See Strickland* at 697. Accordingly, we overrule his first assignment of error.

In his second assignment of error, Donaldson contends that the evidence supporting his conviction for resisting arrest was insufficient because his arrest for menacing was unlawful, and he did not resist. He further argues that the conviction was against the manifest weight of the evidence because his testimony was more credible than the arresting officer's testimony.

In a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found all the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. When considering a challenge to the weight of the evidence, the court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of

justice. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). In a bench trial, we must defer to the factual findings of the judge regarding the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212, (1967), paragraph one of the syllabus.

R.C. 2921.33(A) states: “No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another.” A lawful arrest is a required element of the offense. *State v. Raines*, 124 Ohio App.3d 430, 706 N.E.2d 414 (1st Dist.1997). An arrest is lawful if the officer had probable cause to believe that a crime was committed by the defendant, even if the defendant is ultimately found not guilty of the crime. *N. Ridgeville v. Reichbaum*, 112 Ohio App.3d 79, 85, 677 N.E.2d 1245 (9th Dist.1996).

In this case, Donaldson told Officer Scott Owen, “I owe you something.” Owen testified that he interpreted that statement as a threat, and while attempting to arrest him, Donaldson prevented him from putting on the handcuffs until he was maced. Although Donaldson claims that he was only struggling to prevent the mace from getting into his eyes, Owen’s testimony was sufficient to support the trial court’s determination that the officer had probable cause to arrest Donaldson and that he resisted.

With respect to the manifest weight of the evidence, the trial court, as the trier of fact, was in the best position to judge the credibility of the witnesses, and the court was free to accept Owen’s testimony as credible. Therefore, we find that the conviction was not against the manifest weight of the evidence.

We overrule the second assignment of error and affirm the judgment 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.

ZAYAS, P.J., MYERS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on July 24, 2019

per order of the court _____.

Presiding Judge