

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

STATE OF OHIO,	:	APPEAL NO. C-170209
Plaintiff-Appellee,	:	TRIAL NO. 16CRB-25735B
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMILLA HOBBS,	:	
Defendant-Appellee.	:	

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 Jamilla Hobbs was convicted of making false alarms in violation of R.C. 2917.32. She now appeals, bringing forth two assignments of error. We affirm.

During the trial, it was established that Hobbs had called 911 to report a fire in the apartment building where her ex-boyfriend and Valerie Howard were staying. The report of the fire coincided with the time that Police Officer Wherle was responding to the apartment building to investigate Howard's claim that Hobbs had been harassing her over the telephone and had damaged her car. There was no fire at the apartment building at that time.

During his testimony, Officer Wherle explained that Howard had given him the telephone number that Hobbs had been calling her from and that he had also

been able to obtain the telephone number of the person who had made the call to 911 to report the fire. Officer Wherle testified that “the number that [Howard] gave me was the same phone number that the 911 call for the fire came from.”

In her first assignment of error, Hobbs maintains that the admission of Officer Wherle’s testimony that “the number that [Howard] gave me was the same phone number that the 911 call for the fire came from,” violated her rights under the Confrontation Clause of the Sixth Amendment.

The Confrontation Clause prohibits the admission of testimonial statements of a witness who did not testify at trial, unless he was unavailable to testify and the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Here, Hobbs initially objected to the admission of this statement but, after argument before the court regarding whether the 911 dispatcher should be subpoenaed, Hobbs withdrew her objection. Because the objection was withdrawn, Hobbs has waived this issue absent plain error in the trial court’s admission of the testimony. *See* Evid.R. 103(A)(1) and 103(D); Crim.R. 52(B). Even if such an error is a constitutional one, we review it under a plain-error analysis. *See State v. Lewis*, 1st Dist. Hamilton Nos. C-050989 and C-060010, 2007-Ohio-1485, ¶ 39. To constitute plain error, the error must be obvious and outcome determinative; i.e., it must have affected the outcome of the trial. *Id.*

The admission of the challenged statement did not affect the outcome of the trial. Although the challenged statement provided support for the fact that Hobbs had made the false alarm, there was other evidence to establish that Hobbs was the caller. Howard testified that she was familiar with Hobbs’s voice, and after listening to a recording of the call to 911 in court, Howard identified the caller as Hobbs. The

trial court could have relied solely on Howard's testimony to find that Hobbs was the one who had made the 911 call. And given that this was a bench trial, "we presume that the 'court considered only the relevant, material, and competent evidence in arriving at its judgment unless it affirmatively appears to the contrary.'" *State v. Cowins*, 1st Dist. Hamilton No. C-120191, 2013-Ohio-277, ¶ 11, citing *State v. White*, 15 Ohio St.2d 146, 151, 29 N.E.2d 65 (1968).

Because there was other evidence to demonstrate that Hobbs was the one who reported the false alarm, we cannot say that any alleged error in the admission of Officer Wherle's testimony affected the outcome of the trial. Accordingly, the first assignment of error is overruled.

In her second assignment of error, Hobbs argues that she was denied the effective assistance of counsel when defense counsel withdrew the objection to Officer Wherle's testimony regarding the telephone numbers of Howard's harasser and the 911-caller.

To prevail on a claim of ineffective assistance of trial counsel, an appellant must show, first, that trial counsel's performance was deficient and, second, that the deficient performance was so prejudicial that the defendant was denied a reliable and fundamentally fair proceeding. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

In light of our resolution of the first assignment of error, Hobbs cannot demonstrate prejudice flowing from the admission of the police officer's testimony sufficient to mandate a reversal of her conviction. There was other evidence—Valerie Howard's testimony—to support the trial court's finding that Hobbs was the one who

OHIO FIRST DISTRICT COURT OF APPEALS

had reported the false alarm. Accordingly, the second 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.

MOCK, P.J., ZAYAS and MILLER, JJ.

To the clerk:

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