

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-T-0115
AMANDA C. HALL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2010 CR 00790.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

John P. Laczko, 3685 Stutz Drive, Suite 100, Canfield, OH 44406 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Amanda C. Hall, appeals the judgment of conviction, after a bench trial, on one count of endangering children. Appellant argues the evidence adduced at trial was insufficient to sustain a finding of guilt such that her motion for directed verdict of acquittal should have been granted. Appellant additionally argues the verdict is against the manifest weight of the evidence. For the following reasons, we affirm.

{¶2} On October 14, 2010, appellant was babysitting her neighbor's child, T.H., aged 19 months at the time. Throughout the evening, appellant was the only adult in the home looking after T.H. Appellant's children, all under 12 years old, were also in the home. At some point in the late evening, appellant called T.H.'s mother, Belinda, to inform her that T.H. had burned her arm. Appellant supplied no details concerning the cause of the burn; instead, she only explained the burn was not severe. Belinda walked across the street to investigate, finding T.H.'s hand and arm to be noticeably red, hot to the touch, and extremely irritated. Despite home medications, including various ointments and wraps, the irritation quickly worsened. As the evening grew later, the decision was made to take T.H. to the emergency room at St. Joseph's Hospital. Treating physicians at the hospital assessed the burns and sent the victim to Akron Children's Hospital. T.H. was diagnosed with second-degree burns. Bruising was also noticed on her arm.

{¶3} Trumbull County Children's Services initiated an investigation in conjunction with local law enforcement. One of appellant's children gave an eye-witness statement wherein she detailed that she and one of her siblings observed appellant physically holding T.H.'s arm under running water in the bathtub as a form of punishment. Appellant was also interviewed, but denied holding the toddler's arm under water. Instead, appellant explained that she had just finished giving T.H. a bath, drained the tub, and left the bathroom for a brief moment. Appellant contended that T.H. turned the water back on to play with a water toy and injured herself.

{¶4} Appellant was indicted on one count of endangering children, a second-degree felony in violation of R.C. 2919.22(B)(2) and (E)(1)(3), and one count of

felonious assault, a second-degree felony in violation of R.C. 2903.11(A)(1) and (D)(1)(a). The charges stemmed from the allegation that appellant forcefully submerged T.H.'s hand and arm in scalding hot water, resulting in second-degree burns. The matter proceeded to a bench trial. After the close of the state's case, appellant moved for a directed verdict of acquittal. The motion was granted as to the felonious assault charge, but denied as to the endangering children charge. After appellant presented her case, the trial court denied a renewed motion for acquittal on the remaining charge. Upon consideration, the trial court found appellant guilty of endangering children. Appellant was sentenced to three years in prison. A request to stay execution of the sentence was denied.

{¶5} Appellant now timely appeals and asserts two assignments of error. Appellant's first assignment of error states:

{¶6} The trial court erred to the prejudice of defendant-appellant by denying defendant-appellant's Criminal Rule 29 motion for directed verdict of acquittal, made at the close of the state's case and again at the close of all the evidence, when there was insufficient evidence to prove the elements of the crime of child endangering in violation of R.C. 2929.22(B)(2) & (E)(1)(3), by proof beyond a reasonable doubt.

{¶7} A motion for directed verdict of acquittal, pursuant to Crim.R. 29, tests the legal sufficiency of the evidence. The test for determining the issue of sufficiency is "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond

a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, citing *Jackson v. Virginia*, 443 U.S. 307 (1979). Thus, the claim of insufficient evidence invokes a question of due process, the resolution of which does not allow for a weighing of the evidence. *State v. Lee*, 11th Dist. No. 2010-L-084, 2011-Ohio-4697, ¶9. Crim.R. 29(A) requires the trial court to grant a motion for acquittal if the evidence is insufficient to sustain a conviction on the charged offenses.

{¶8} In this case, the state had the burden of proving beyond a reasonable doubt that appellant did recklessly torture or cruelly abuse the victim, a 19-month old child, resulting in serious physical harm. Appellant does not dispute that the scalding hot liquid, which tested out of her faucet at up to 157 degrees, resulted in serious physical harm. Instead, appellant contends the state failed to establish appellant’s identity as the perpetrator. Appellant points out that, at trial, no eyewitnesses were able to directly implicate her.

{¶9} Initially, it must be recognized that circumstantial evidence possesses the same probative value as direct evidence. *State v. Hendrix*, 11th Dist. No. 2011-L-043, 2012-Ohio-2832, ¶137, citing *State v. Jenks*, *supra*, 272. “Circumstantial evidence has been defined as testimony not grounded on actual personal knowledge or observation of the facts in controversy, but of other facts from which inferences are drawn, showing indirectly the facts sought to be established.” *State v. Windle*, 11th Dist. No. 2010-L-033, 2011-Ohio-4171, ¶34, citing *State v. Nicely*, 39 Ohio St.3d 147, 150 (1988). Proof beyond a reasonable doubt may therefore be established by circumstantial evidence. *Hendrix*, *supra*, ¶137.

{¶10} Here, there was a sufficient evidentiary basis on which to sustain a conviction as a result of a combination of circumstantial and direct evidence. At trial, Dr. Daryl Steiner, a pediatric physician at Akron Children's Hospital, personally examined T.H., observed the injury, and offered an expert opinion as to the cause of the extensive burn. He explained the injury was a partial-thickness circumferential scald burn, which extended from the mid-forearm to the tips of the fingers covering all surfaces, including the palm. He also noticed bruising to the upper arm.

{¶11} Dr. Steiner opined T.H.'s injury was the result of forceful immersion into a hot liquid. In support, Dr. Steiner pointed to the uniformity of the burn; that is, the hot liquid came into contact uniformly with the entire affected area, and there was no area of skin on the hand or forearm that was not burned. The doctor explained this was not a spill, splash, or flow pattern that would otherwise indicate a non-uniform burn pattern to the affected area. There was also no area of transition between the affected area and the unaffected area. Additionally, Dr. Steiner explained the bruising pattern above the burned area indicated that the victim's upper arm had been grabbed forcefully, with the bruising pattern marking the area between the fingers, where the blood was forced out of the subcutaneous tissue.

{¶12} Appellant herself explained there were no other adults in the home at the time, so there could be no other person who held the toddler's arm. Appellant's child, though testifying for the defense, was impeached by her prior statement indicating that appellant held T.H.'s arm under the water because she was misbehaving. Thus, after viewing the evidence in a light most favorable to the prosecution, any rational trier of

fact could have found the essential elements of the remaining charge proven beyond a reasonable doubt.

{¶13} Appellant's first assignment of error is without merit.

{¶14} Appellant's second assignment of error states:

{¶15} The trial court denied appellant due process under the Fourteenth Amendment due to the fact her conviction for child endangering was against the manifest weight of the evidence and the judge's opinion was inconsistent with the evidence and testimony presented at trial.

{¶16} To determine whether a verdict is against the manifest weight of the evidence, a reviewing court must consider the weight of the evidence, including the credibility of the witnesses and all reasonable inferences, to determine whether the trier-of-fact "lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). In weighing the evidence submitted at a criminal trial, an appellate court must defer to the factual findings of the trier-of-fact regarding the weight to be given the evidence and credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus.

{¶17} Appellant argues this case is analogous to *State v. Miley*, 114 Ohio App.3d 738 (4th Dist.1996), where the Fourth Appellate District reversed a child endangering conviction on manifest weight grounds. The chief distinction is axiomatic: appellant relies on another court's review of a different case with different facts and different testimony. Indeed, this court has previously noted the limited precedential

value of *Miley* by highlighting its highly-distinguishable facts, including the fact that, in *Miley*, there was no evidence the defendant was with the child during any injury. See *State v. Hendrex*, 11th Dist. No. 2009-T-0091, 2010-Ohio-2820, ¶42-46. Additionally, the Fourth District distinguished its holding on the grounds that, in *Miley*, the state could not establish a specific period of time during which the abuse occurred. *State v. Meadows*, 4th Dist. No. 99CA2651, 2001 Ohio App. LEXIS 3120, *33 (Feb. 12, 2001). Similarly, we likewise find *Miley* to be distinguishable: not only is it clear the injury transpired on the evening of October 14, 2010, it is equally clear appellant was the only adult with T.H.

{¶18} We cannot say the trial court lost its way in returning a verdict of guilty. Appellant, taking the stand in her own defense, maintained that she did not force T.H.'s hand in any fashion. Instead, appellant stated that she gave T.H. a bath, drained the bathtub, and left the room for a moment. Appellant then heard water running and determined it was coming from the bathroom. Appellant testified that, as she approached the bathroom, she heard T.H. screaming. She walked in to find T.H. alone in the bathtub, hysterically crying. Appellant maintained that T.H. pulled the water faucet on and twisted it upwards to the hottest setting, burning herself. Appellant explained she was so alarmed upon discovering T.H. that she quickly pulled her out of the bathtub, apparently bruising her arm above the burn in the process.

{¶19} However, Dr. Steiner explained that T.H.'s injury was not medically consistent with a child standing in an empty bathtub and turning on the hot water to hold a toy underneath. Such a scenario would *not* have resulted in a uniform burn pattern, but instead a non-uniform pattern because the water would have flowed across the

body surface. In fact, there would have been more burns noticed elsewhere from the water. Further, in that scenario, there would have been no force holding the arm, and the flow of water would have been hot and painful such that T.H. would have immediately moved her hand away. Also, there would not have been a burn pattern on the victim's palm, where the toy would have been held. Yet, as explained above, the injury consisted of a uniform burn pattern, including scalded skin in the victim's palm, with no burns noticed elsewhere.

{¶20} Based on the foregoing, as well as the complete transcript, this is not a case that warrants reversal based on manifest weight. The trial court, after hearing both sides, elected to believe the state's account. As the trial court explained, the expert's opinion was convincing and made common sense; if appellant's version was true, there is no explanation as to why the child did not have burns elsewhere. The verdict will not be disturbed as a result.

{¶21} Appellant's second assignment of error is without merit.

{¶22} The Trumbull County Court of Common Pleas is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.