[Cite as *State v. Cuffee*, 2017-Ohio-598.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RASHAAN M. CUFFEE

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case Nos. 2016 CA 00127 and
2016 CA 00129

O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Canton Municipal Court, Case Nos. 2016 CRB 00328 and 2016 CRB 00334
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	January 30, 2017

APPEARANCES:

For Plaintiff-Appellee

JOSEPH MARTUCCIO
CANTON LAW DIRECTOR
TYRONE D. HAURITZ
CANTON CITY PROSECUTOR
TASHA FORCHIONE
ASSISTANT LAW DIRECTOR
218 Cleveland Avenue, SW
Canton, Ohio 44702

For Defendant-Appellant

EARLE E. WISE, JR.
122 Central Plaza North
Canton, Ohio 44702

Wise, J.

{¶1} Defendant-Appellant Rashaan M. Cuffee appeals from his convictions, in the Canton Municipal Court, Stark County, on charges of child endangering, illegal marihuana cultivation, and drug paraphernalia possession. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows:

{¶2} On January 21, 2016, Canton police officers responded to the report of a neighbor of a crying child in an apartment on Kingston Drive S.E. The responding officers arrived and could hear the sound of crying. Upon entering the apartment, the officers found a two-year old boy stuck on the toilet, apparently because his "potty seat" had fallen into the bowl. No one else was in the apartment. The officers also noticed evidence of marihuana use and cultivation in the residence. After tending to the child, the officers located Appellant Cuffee and his girlfriend, Justice Chance, walking back from a nearby bus stop. Chance explained that she had left the child with her sister. However, Chance claimed she did not know her sister's last name and did not have a phone number for her.

{¶3} Appellant was thereafter arrested and charged with one count of illegal cultivation of marihuana (R.C. 2925.04(A) - fourth-degree misdemeanor), one count of child endangering (R.C. 2919.22(A) - first-degree misdemeanor), and one count of possession of drug paraphernalia (R.C. 2925.14(C)(1) – fourth-degree misdemeanor). The marihuana cultivation and child endangering charges became trial court case number 2016 CRB 00328. The drug paraphernalia charge became case number 2016 CRB 00334.

{¶4} Appellant thereafter entered pleas of not guilty to all charges. The matter proceeded to a jury trial on May 20, 2016. At the close of the State's case, appellant moved for acquittal pursuant to Crim.R. 29. The trial court denied same. Tr. at 199-200.

{¶5} After hearing the evidence and arguments of counsel, the jury found appellant guilty on all three counts.

{¶6} On May 23, 2016, the trial court sentenced appellant to thirty days in jail plus additional sanctions, with all but two days suspended on condition of good behavior for two years, on the count of marihuana cultivation, and one-hundred eighty days in jail plus additional sanctions, with all but ninety days suspended on condition of good behavior for two years, on the count of child endangering. The court also sentenced appellant, in the second case, to thirty days in jail plus additional sanctions, with all but two days suspended on condition of good behavior for two years, on the count of possession of drug paraphernalia.

{¶7} On June 21, 2016, appellant filed a notice of appeal as to both trial court case numbers. This Court consolidated the two assigned appellate case numbers on October 13, 2016. Appellant herein raises the following three Assignments of Error:

{¶8} "I. MR. CUFFEE'S CONVICTION ON THE CHARGE OF CULTIVATION OF MARIJUANA WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS NO EVIDENCE WAS PRESENTED THAT MR. CUFFEE CULTIVATED OR WAS EVEN AWARE OF THE MARIJUANA PLANTS AT ISSUE, AND MS. JUSTICE CHANCE EXPLICITLY TESTIFIED THAT THE MARIJUANA PLANTS AT ISSUE WERE HERS.

{¶9} "II. MR. CUFFEE'S CONVICTION ON THE CHARGE OF ENDANGERING CHILDREN WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS MS.

JUSTICE CHANCE TESTIFIED THAT SHE TOLD MR. CUFFEE THAT THE CHILD WAS BEING WATCHED BY A RELATIVE, AND THAT HE WAS THEREFORE UNAWARE THAT THE CHILD HAD BEEN LEFT ALONE.

{¶10} "III. MR. CUFFEE'S CONVICTION ON THE CHARGE OF POSSESSION OF DRUG PARAPHERNALIA WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS NO EVIDENCE WAS PRESENTED THAT MR. CUFFEE POSSESSED OR WAS EVEN AWARE OF THE ITEMS ALLEGED TO BE PARAPHERNALIA."

I.

{¶11} In his First Assignment of Error, appellant argues his conviction for illegal cultivation of marihuana was against the manifest weight of the evidence.

{¶12} The gist of appellant's present argument is that the State failed to prove beyond a reasonable doubt that appellant knowingly cultivated any marihuana in the apartment. Thus, as an initial matter, appellant appears to be raising a legal sufficiency argument, rather than a true "manifest weight" argument. In Ohio, a "sufficiency" argument and a "manifest weight" argument in a criminal appeal are not interchangeable and require different analyses. *See, e.g., State v. Williams,* 4th Dist. Scioto No. 00CA2731, 2001–Ohio–2579, citing *State v. Ricker,* 10th Dist. Franklin App. No. 97APC01–96, 1997 WL 606861. Accordingly, in the interest of justice, we will treat appellant's challenge to his conviction as a claim of insufficiency of the evidence. In reviewing such a claim, "[t]he relevant inquiry 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* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶13} Appellant herein was charged with violating R.C. 2925.04(A) which states: "No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance."

{¶14} During the trial, the State adduced evidence that investigating officers discovered marihuana plants, dried marihuana, burnt marihuana cigarette butts, and growing materials in the apartment. Specifically, marihuana plants and a vent fan were found in a lower kitchen cupboard. Tr. at 114. A weighing scale, fertilizer, and a clay pot were discovered in another cupboard. *Id*. Appellant does not appear to challenge the existence and nature of the seized contraband per se. However, appellant essentially argues the State did not present evidence to the jury that he cultivated the marihuana in the shared apartment or that he was aware of same. Appellant also points out that his girlfriend, Justice Chance, testified the plants and contraband were her property. *See* Tr. at 152.

{¶15} Ohio law generally recognizes that circumstantial evidence is sufficient to prove the essential elements in a criminal case. *State v. Willey*, 5th Dist. Guernsey No. 98 CA 6, 1999 WL 3962, citing *State v. Hopfer* (1996), 112 Ohio App.3d 521, 558, 679 N.E.2d 321. "The only notable exception to this principle is where the inference between the facts proven and the facts sought to be proven is so attenuated that no reasonable mind could find proof beyond a reasonable doubt." *Id.,* citing *State v. Griffin* (1979), 13 Ohio App.3d 376, 377-378, 469 N.E.2d 1329. It is well-established that circumstantial evidence has the same probative value as direct evidence. *See*, *e.g.*, *State v. Pryor,* 5th Dist. Stark No. 2007CA00166, 2008–Ohio–1249, ¶ 34, citing *Jenks, supra*.

{¶16} Circumstantial evidence that a defendant was located in very close proximity to readily usable drugs may show constructive possession. *See*, *e.g*., *State v. Carrothers,* 5th Dist. Tuscarawas No. 2004 AP 10 0067, 2005–Ohio–4495, ¶ 7, citing *State v. Barr* (1993), 86 Ohio App.3d 227, 235, 620 N.E.2d 242, 247–248. In order to establish constructive possession of illegal drugs, the evidence must prove that the defendant was able to exercise dominion and control over the contraband. *See id.*, citing *State v. Wolery* (1976), 46 Ohio St.2d 316, 332, 348 N.E.2d 351. Specifically, "[c]onstructive possession has been found when the drugs are in plain view in an area shared with another." *State v. Sisson*, 2nd Dist. Montgomery No. 22173, 2008-Ohio-3490, ¶ 10, citing *State v. Boyd* (1989), 63 Ohio App.3d 790, 766-797, 580 N.E.2d 443.

{¶17} Appellant directs us to *State v. Hicks*, 9th Dist. Summit No. 24017, 2008-Ohio-4842, ¶ 6, for the proposition that possession may not be inferred *solely* from the defendant's ownership or occupation of the location where drugs are found. *See*, *also*, R.C. 2925.01(K). However, in the instant case, the State presented testimony from Justice Chance, appellant's girlfriend, that appellant had access to the burnt marihuana, and the officers' testimony indicates that much of the contraband was in plain view.[1] *See* Tr. at 113-122. *Sisson*, *supra*. Furthermore, although appellant later effectively denied saying it, Officer Hart testified that appellant told him Chance's ex-boyfriend "basically forced [appellant and Chance] to cultivate the marihuana." Tr. at 119. While we recognize that this case involved more than simple marihuana possession, we reject appellant's assertion that there was no evidence presented in this matter beyond appellant's mere

[1] The briefs before us do not expound upon the general question of "plain view" as it pertains to items located in kitchen cupboards during a police safety sweep.

residence in the apartment in which the evidence of cultivation was found. Furthermore, we find much of the additional case law upon which appellant relies addresses distinguishable fact patterns, such as unusual numbers of temporary residents (*State v. Swalley*, 11th Dist. Ashtabula No. 2010–A–0008, 2011-Ohio-2092, ¶ 68) or lack of proof of recent access to the residence by the person charged (*State v. Haynes,* 25 Ohio St.2d 264 (1971); *State v. Pumpelly*, 77 Ohio App.3d 470, 477, 602 N.E.2d 714 (1991)).

{¶18} Therefore, upon review, we find sufficient circumstantial evidence existed for reasonable fact finders to conclude beyond a reasonable doubt that appellant engaged in marihuana cultivation as charged. We thus hold said conviction was supported by the sufficiency of the evidence.

{¶19} Appellant's First Assignment of Error is overruled.

II.

{¶20} In his Second Assignment of Error, appellant argues his conviction for child endangering was against the manifest weight of the evidence.

{¶21} Appellant's argument is again indicative of a sufficiency of the evidence claim. Appellant was convicted of violating R.C. 2919.22(A), which states in pertinent part as follows: "No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. ***."

{¶22} "The risks involved in leaving small children unsupervised are common knowledge." *State v. Walton-Kirkendoll*, 9th Dist. Lorain No. 16CA010907, 2017-Ohio-

237, ¶ 10, citing *City of Mason v. Rasmussen,* 12th Dist. Warren No. CA2000–08–077, 2001 WL 290248. In the case *sub judice*, the evidence clearly established that the young child was left alone for at least thirty minutes, ending up in the precarious and traumatic position of being trapped on an adult toilet, not to mention the issue of potential exposure to marihuana-related items around the apartment. At trial, Justice Chance, appellant's girlfriend and the mother of the two-year-old child at issue, testified that appellant was the child's father; as such, there is no present dispute that appellant had the status of "parent" for purposes of R.C. 2919.22(A). As the State notes in response, both parents in this situation had a duty to make sure the child was properly supervised and to protect the child from the risk of harm. We therefore find no merit in appellant's claim of insufficient evidence as to the child endangering charge.

{¶23} In the interest of justice, we will also address the manifest weight of the evidence as to this assigned error. Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. *See, also, State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175, 485 N.E.2d 717.

{¶24} We note that Ms. Chance testified as a prosecution witness at trial, although the State asked that she be declared a hostile witness. Furthermore, appellant testified in

his own defense. Appellant maintains that they both testified that they thought the child was being watched by Chance's sister. However, as noted in our recitation of the facts, when Chance was asked for further information by police officers at the scene, she claimed a lack of knowledge of her sister's last name and her phone number. Chance later testified that she had lied to appellant about the existence of the babysitter, but appellant apparently never confirmed that the person was present, even though he stated that he had gone back to the door to hurry Chance along. Tr. at 212.

{¶25} Given these types of testimonial inconsistencies, having reviewed the record under the standard of *Martin*, we find the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that appellant's conviction be reversed and a new trial ordered.

{¶26} Appellant's Second Assignment of Error is therefore overruled.

III.

{¶27} In his Third Assignment of Error, appellant contends his conviction for possession of drug paraphernalia was against the manifest weight of the evidence.

{¶28} R.C. 2925.14(C)(1) states, with certain exceptions, "*** no person shall knowingly use, or possess with purpose to use, drug paraphernalia." Appellant's argument, in lieu of a strict manifest weight claim, mirrors his claim of insufficiency of the evidence as set forth in his First Assignment of Error. Based on our previous analysis, upon review, we find sufficient circumstantial evidence existed for reasonable fact finders to conclude beyond a reasonable doubt that appellant engaged in the possession of drug paraphernalia as charged. We thus hold said conviction was supported by the sufficiency of the evidence.

{¶29} Appellant's Third Assignment of Error is therefore overruled.

{¶30} For the foregoing reasons, the judgments of the Canton Municipal Court, Stark County, Ohio, are hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

JWW/d 0125