[Cite as *State v. Crowell*, 2020-Ohio-923.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 108592
v.	:	
TARAJUANA CROWELL,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 12, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-633669-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Eben McNair, Assistant Prosecuting Attorney, *for appellee.*

Michael P. Maloney, *for appellant.*

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Tarajuana Crowell appeals her conviction for trafficking in drugs, possession of drugs, and three counts of endangering children. Upon review, we affirm.

Background

{¶ 2} Appellant was convicted of the above offenses following a jury trial. The testimony at trial reflects that on October 1, 2018, Cleveland police were executing a search warrant at a house where appellant resided. The police were searching for a gun that was used in a crime that was committed by appellant's son. Appellant and her mother were both at the home when the search warrant was executed. Also, several children were present in the home at the time of the search.

{¶ 3} Although the firearm the police were looking for was not found in the home, the police found a number of other firearms, marijuana, and marijuana plants while conducting the search. Appellant's mother had a concealed carry weapons permit, and there was no information that the firearms were not lawfully purchased or that they had been stolen.

{¶ 4} Sergeant Al Johnson, who works in the Cleveland police gang impact unit, testified that prior to obtaining the search warrant, he learned that a firearm connected to another crime involving appellant's son might be at appellant's home. Sgt. Johnson testified that they went to the home to execute the search warrant and spoke with appellant and her mother. He observed "[appellant] went upstairs to gather some laundry with her mother, and they returned downstairs with a laundry basket." Upon execution of the warrant, marijuana was recovered from the laundry basket. Sgt. Johnson, who testified to his training and experience, characterized the packaging of the marijuana as being consistent with "trafficking packaging."

{¶ 5} The trial court denied appellant's Crim.R. 29 motion for acquittal. Appellant was convicted of trafficking in drugs in violation of R.C. 2925.03(A)(2), possession of drugs in violation of R.C. 2925.11(A), and three counts of endangering children in violation of R.C. 2919.22(A). The trial court sentenced appellant to an aggregate term of imprisonment of 18 months. Appellant timely appealed.

Law and Analysis

{¶ 6} Under her first three assignments of error, appellant claims that the trial court erred in denying her Crim.R. 29 motion for acquittal because she claims there was insufficient evidence to prove the elements for each of the offenses.

{¶ 7} A Crim.R. 29 motion for judgment of acquittal requires the court to consider "if the evidence is insufficient to sustain a conviction" of the offense or offenses charged in the indictment. Crim.R. 29(A). "The 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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 8} Appellant first claims that the evidence was insufficient to prove the elements of trafficking in drugs under R.C. 2925.03(A)(2), which provides as follows:

> (A) No person shall knowingly do any of the following:
>
> * * *
>
> (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled

> substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

{¶ 9} Appellant argues that the sole evidence of drug trafficking was Sgt. Johnson's testimony that the marijuana had been "packaged in bulk," that there was no evidence of any controlled purchases or drug activity at the house, and that no cash, scales, or packaging materials associated with drug trafficking were found in the house. However, "it has been long settled that 'police officers may testify to the nature and amount of drugs and its significance in drug trafficking.'" *State v. Hawthorne*, 8th Dist. Cuyahoga No. 102689, 2016-Ohio-203, ¶ 15, quoting *State v. Young*, 8th Dist. Cuyahoga No. 92744, 2010-Ohio-3402, ¶ 19.

{¶ 10} The marijuana that was found in the laundry basket in the kitchen was in a large bag containing several packaged bags. Sgt. Johnson testified, based on his training and experience, that the marijuana was packaged "in bulk" and in a size and consistency indicative of "trafficking packaging." Sgt. Johnson testified that in cases of individuals who simply possess drugs for personal use, the drugs are typically packaged in "smaller sandwich bags," with the typical amount for personal use being about 8 grams. He testified that when drugs are packaged for resale or prepared for shipment, the drugs are usually "packaged in bulk" and "if you're packaging for trafficking, it's going to be bigger bags." Sgt. Johnson stated that the total weight of the marijuana recovered from the laundry basket was 237.12 grams. The jury could reasonably infer from the testimony that appellant was involved with trafficking in marijuana.

{¶ 11} Next, appellant argues that there was insufficient evidence to prove the elements of possession of drugs under R.C. 2925.11(A), which provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance * * *."

{¶ 12} Appellant argues that there was no evidence that she ever had direct possession of the marijuana, that she did not own the house and had only lived there several weeks, and that there was insufficient evidence to establish she had possession of the marijuana, constructive or otherwise.

{¶ 13} "Possession" is statutorily defined as "having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). A person can have actual or constructive possession of a controlled substance. *State v. Payne*, 8th Dist. Cuyahoga No. 107825, 2019-Ohio-4158, ¶ 67, citing *State v. Messer*, 107 Ohio App.3d 51, 56, 667 N.E.2d 1022 (9th Dist.1995). "Constructive possession exists when an individual exercises dominion and control over an object, even though that object may not be within [the individual's] immediate physical possession.'" *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982), citing *State v. Wolery*, 46 Ohio St.2d 316, 329, 348 N.E.2d 351 (1976). Constructive possession may be established by circumstantial evidence. *Payne* at ¶ 68.

{¶ 14} In this case, appellant was present and resided at the home where the search warrant was executed. Sgt. Johnson testified that appellant and her mother went upstairs to gather laundry, and they returned with a laundry basket. During

the search of the premises, packaged marijuana was found in the laundry basket. The evidence was sufficient to establish appellant had constructive possession of the marijuana.

{¶ 15} Finally, appellant argues there was insufficient evidence to prove the elements of endangering children under R.C. 2919.22(A), which provides in relevant part as follows:

> (A) 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 * * * shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

{¶ 16} Appellant argues that she could not have been convicted of endangering children because the jury acquitted her of all weapons charges and all firearm specifications. However, a rational trier of fact could have found that appellant, by permitting illegal drugs to be present in the home, created a substantial risk to the health or safety of the children who were present in the home. Indeed, "[s]everal courts have held that permitting illegal drugs to be present in the home or presence of children is a violation of R.C. 2919.22(A)." *State v. Byrd*, 2d Dist. Champaign No. 99-CA-17, 2000 Ohio App. LEXIS 1526, 4 (Apr. 7, 2000), citing *State v. Tschudy*, 9th Dist. Summit No. 16820, 1995 Ohio App. LEXIS 2168 (May 24, 1995), *In re Beeman*, 11th Dist. Lake No. 93-L-098, 1994 Ohio App. LEXIS 4999 (Nov. 4, 1994), and *State v. Moore*, 6th Dist. Sandusky No. S-90-16, 1991 Ohio App. LEXIS 4364 (Sept. 20, 1991); *see also State v. Thompson*, 3d Dist. Seneca No. 13-

17-26, 2018-Ohio-637, ¶ 95; *State v. Pruitt*, 1st Dist. Hamilton Nos. C-160617 and C-160618, 2017 Ohio App. LEXIS 2829, 2 (July 7, 2017).

{¶ 17} Upon viewing the evidence in a light most favorable to the prosecution, we conclude any rational trier of fact could have found the essential elements of the crimes proven beyond a reasonable doubt. Accordingly, we find the trial court did not err in denying appellant's Crim.R. 29 motion for acquittal. Appellant's first, second, and third assignments of error are overruled.

{¶ 18} Under her fourth assignment of error, appellant claims the trial court erred in allowing the state to present rebuttal witness testimony from Sgt. Johnson about appellant making a statement that the marijuana in the laundry basket was hers. Defense counsel objected to the rebuttal witness and argued that the prosecution was attempting "to patch up a hole in their case" since there had been no testimony as to whether appellant admitted that the marijuana was hers.

{¶ 19} The record reflects that on cross-examination, appellant's mother was asked: "Did you hear your daughter tell the officers that the marijuana from the laundry basket was hers?" Appellant's mother responded, "No." She also denied that any of the marijuana found in the house was hers. However, on redirect examination, defense counsel inquired, "In terms of your daughter, the prosecutor asked you some questions about whether the officers asked her questions about the marijuana in the home." Appellant's mother responded as follows:

> The officer said, "Oh, this is yours." [Appellant] said, "No." He said, "Whose is this." We both looked like we don't know. He said, "Oh, this must be yours." [Appellant] proceeded to say no.

The rebuttal witness, Sgt. Johnson, was asked: "Did [appellant] say anything about the marijuana that was recovered from the laundry basket?" Sgt. Johnson responded: "[Appellant] said that the marijuana was hers."

{¶ 20} The state argues that Sgt. Johnson's rebuttal testimony related to the credibility of the defense witness. The state further claims that even if the admission of the rebuttal testimony was error, any error was harmless.

{¶ 21} "Harmless error" is defined under Crim.R. 52(A) as "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded."

> To determine whether an alleged error affected the substantial rights of the defendant and requires a new trial, '[t]he reviewing court must ascertain (1) whether the defendant was prejudiced by the error, i.e., whether the error had an impact on the verdict, (2) whether the error was not harmless beyond a reasonable doubt, and (3) whether, after the prejudicial error is excised, the remaining evidence establishes the defendant's guilt beyond a reasonable doubt.'

State v. Ford, Slip Opinion No. 2019-Ohio-4539, ¶ 233, quoting *State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, 62 N.E.3d 153, ¶ 50.

{¶ 22} Upon our review of the entire record, we conclude beyond a reasonable doubt that appellant was not prejudiced by the rebuttal witness testimony because any error in its admission did not impact the verdict. The remaining evidence admitted at trial established appellant's constructive possession of the drugs, as well as her guilt beyond any reasonable doubt of each of the crimes. Appellant's fourth assignment of error is overruled.

{¶ 23} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
EILEEN A. GALLAGHER, J., CONCUR