

IN THE SUPREME COURT OHIO

STATE OF OHIO,

:

08 - 1461

Appellee,

:

On Appeal from the Hamilton
County Court of Appeals,
First Appellate District

vs.

:

MAUREEN MOSS,

:

Court of Appeals
Case No. C 070354

Appellant.

:

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT MAUREEN MOSS

Robert R. Hastings, Jr. (0026041)
Law Office of the Hamilton County
Public Defender
230 East Ninth Street, Suite 2000
Cincinnati, Ohio 45202
(513) 946-3712
Fax No. (513) 946-3707
bhastings@cms.hamilton-co.org

COUNSEL FOR APPELLANT MAUREEN MOSS

Thomas Beridon (0071227)
Assistant Prosecuting Attorney
City of Cincinnati
801 Plum Street, Room 225
Cincinnati, Ohio 45202
(513) 352-3618
Fax No. (513) 352-5217
Thomas.beridon@cincinnati-oh.gov

COUNSEL FOR APPELLEE, STATE OF OHIO

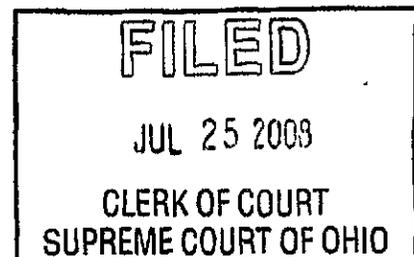


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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents the issue of whether the Court of Appeals applied the correct standard of proof in affirming the Appellant's conviction for Child Endangering. Appellant maintains that her rights under the Fourteenth Amendment to the United States Constitution and her rights under Article I, Section 10 of the Ohio Constitution to due process under the law were violated by the misapplication of the standard of proof.

STATEMENT OF THE CASE AND FACTS

Cincinnati Police Officer George Pille testified that he had observed the Appellant stop her vehicle in the middle of the street and saw her converse with a young black male. He then said he saw the male black motion the Appellant to pull over to the curb. At that point Officer Pille stated that he saw the black male hand a small amount of marijuana to the Appellant. At that point Officer Pille exited his vehicle and positioned himself in the middle of the street, identified himself as a police officer, and ordered the Appellant to stop.

According to Officer Pille, the Appellant slowly pulled away in an attempt to drive down the street as he yelled several times for her to stop. He then drew his weapon and ordered the Appellant to stop, which she did. Despite the fact that he had draw his weapon and pointed at the car, Officer Pille stated he would not have fired his weapon. Instead of firing he testified he would have moved out of the path of the vehicle and let the vehicle continue down the street.

Once the Appellant stopped her vehicle, Officer Pille observed the Appellant's six year old child sitting in a belted backseat of the vehicle. It was then that Officer Pille decided to charge the Appellant with Child Endangering.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. I:

Where the evidence does not establish by proof beyond a reasonable doubt that the Appellant's actions created a substantial risk to the health or safety of her child, a conviction for Child Endangering violates Appellant's due process rights under the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution.

In the case of State v. Monroe (2005) 105 Ohio St.3d 384, 827, N.E.2d 285, this Court stated that, "In reviewing the record for sufficiency, 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."

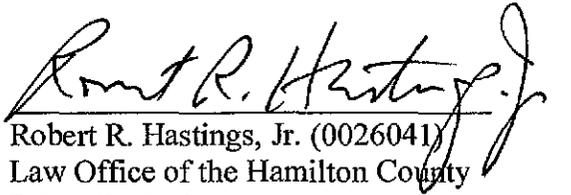
The Judgment Entry of the Court of Appeals in this case states that, "a reasonable trier of fact could have found that there was a strong possibility of harm ... that the child was placed in danger..." The Court made this finding despite the testimony of Officer Pille that he had neither any intention of firing his weapon nor any intention to stop the Appellant's vehicle if the Appellant had not stopped. The Court of Appeals decision ignores the definition of strong which is defined by Merriam-Webster Dictionary as being strong, cogent or convincing. Under the facts in this case, there was no convincing possibility that a substantial risk to Appellant's child was created by Appellant's actions.

Conclusion

Appellant respectfully requests that this Court accept jurisdiction of this matter for the reasons:

1. That the Appellant's right to due process under the 14th Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution where there was insufficient evidence on the essential element of creating a substantial risk for the crime of Child Endangering.
2. That if a lesser standard of proof as to substantial risk is permitted, this case would serve as a bad precedent for other cases involving the charge of Child Endangering. When a standard is applied to facts that are not "strong" or "convincing" as to whether the risk was substantial, any parent's rights can be subject to being violated. The resulting conviction can have far reaching consequences as to future charges, custody cases, or dependency cases.

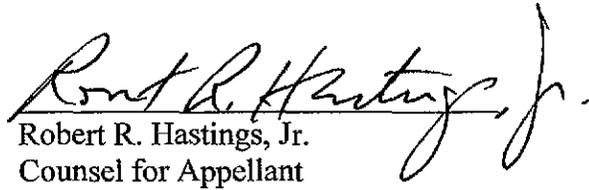
Respectfully submitted,



Robert R. Hastings, Jr. (0026041)
Law Office of the Hamilton County
Public Defender
230 East Ninth Street, Suite 2000
Cincinnati, Ohio 45202
(513) 946-3712– Telephone
(513) 946-3707 – Fax
Counsel for Appellant,
Maureen Moss

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to the Office of the City of Cincinnati Prosecutor, 801 Plum Street, Room, Cincinnati, Ohio 45202 on this 24th day of July, 2008.


Robert R. Hastings, Jr.
Counsel for Appellant

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



ENTERED
JUN 11 2008

STATE OF OHIO,	:	APPEAL NOS. C-070353 ✓
	:	C-070354 ✓
Plaintiff-Appellee,	:	TRIAL NO. 07CRB-5817AB
vs.	:	
	:	JUDGMENT ENTRY.
MAUREEN MOSS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Maureen Moss appeals her convictions for child endangering and possession of marijuana. We affirm.

At Moss's trial, Cincinnati Police Officer George Pille testified that he had observed Moss engage in a drug transaction that began when Moss stopped her vehicle to talk to a man in the street and continued as Moss followed his directive to move to the side of the road, where he handed Moss a baggie in exchange for money. Pille then saw Moss pass the baggie to her front-seat passenger and begin to drive away. Moss's six-year-old son was a back-seat passenger in the vehicle during this drug transaction.

After observing the transaction, Pille identified himself as a police officer and ordered Moss to stop. According to Pille, Moss attempted to escape by flooring the vehicle's accelerator, causing the tires to spin and the vehicle to slide on the ice, snow, and

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

slush-covered roadway. Pille, who was standing in the path of the vehicle, continued yelling "stop." Moss did not comply until Pille drew his gun and pointed it at her. Pille testified that Moss's action placed the boy in danger, although he also testified that, at that point, he would not have intentionally fired his weapon. Pille then found a baggie between the two front seats. The substance in the baggie tested positive for marijuana.

Testifying in her defense, Moss claimed that the drug dealer pitched the marijuana through the driver's window to the front-seat passenger, all without her solicitation, participation, or payment. She also testified that her son was in a booster seat and properly buckled in, and that she did not try to escape from Pille, who, she claimed, had his gun drawn when he first approached her.

In this appeal, Moss now challenges the weight and sufficiency of the evidence to support her convictions.

Child Endangering

Moss was convicted of misdemeanor child endangering in violation of R.C. 2919.22(A). This section of the statute prohibits a parent from violating a duty of care, protection, or support and thereby creating a substantial risk to the health or safety of a child. The culpable mental state of recklessness is an essential element of the offense.² A person acts recklessly when, with heedless indifference to the consequences, she perversely disregards a known risk that her conduct is likely to cause a certain result or is likely to be of a certain nature.³

Moss contends that the state failed to produce any evidence that she had acted recklessly and that her actions had created a substantial risk to the health or safety of her child. She cites the fact that her son was secured in the back seat with a booster seat and a

² *State v. Massey* (1998), 128 Ohio App.3d 438, 441, 715 N.E.2d 235, citing *State v. McGee* (1997), 79 Ohio St.3d 193, 680 N.E.2d 975, syllabus.

³ R.C. 2901.22(C).

seat belt. Also, she notes that Officer Pille acknowledged that although he had drawn his weapon, he was not going to fire it at that point, even if Moss would have continued to drive away.

We are unpersuaded by Moss's arguments. In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the state.⁴ The state presented evidence that Moss had brought her young child to a drug deal, an illicit and often dangerous activity, and had then attempted to flee in her vehicle on a hazardous roadway, requiring Officer Pille to draw his gun and aim inside the vehicle containing the child. Based upon this evidence, the trier of fact could reasonably have found Moss's conduct reckless and more than just bad judgment. And although her son was not actually physically injured during the encounter, a reasonable trier of fact could have found that there was a strong possibility of harm, based upon Officer Pille's express testimony that the child was placed in danger and the cumulative effect of the precarious circumstances.⁵

After reviewing the evidence, we hold that it was sufficient to establish that Moss had recklessly violated a duty of care to her son, creating a substantial risk to his health and safety. Likewise, we cannot say that the trier of fact lost its way in evaluating the evidence such that the conviction for child endangering was against the manifest weight of the evidence.⁶

Possession of Marijuana

Moss also challenges the sufficiency and weight of the evidence to support her conviction for possession of marijuana in violation of Cincinnati Municipal Code 910-23. Officer Pille testified that he had observed Moss purchase drugs and that he had found a

⁴ *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁵ See R.C. 2901.01(A)(8).

⁶ See *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

baggie of marijuana in the front seat of her vehicle shortly after the transaction. Although Moss testified that the drug dealer had just thrown the drugs into her vehicle without her consent, the trier of fact was free to reject her testimony.⁷ After reviewing the record, we hold that Moss's possession conviction was supported by sufficient evidence and was not against the manifest weight of the evidence.⁸

Accordingly, we overrule the assignments of error and affirm the trial court's judgment.

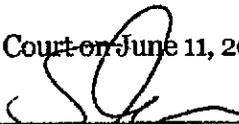
Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 11, 2008

per order of the Court _____


Presiding Judge

⁷ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

⁸ *Jenks, supra; Thompkins, supra.*