[Cite as *State v. Hawkins*, 2009-Ohio-5253.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards , J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008CA 00280
ZAKIYA A. HAWKINS	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING: Criminal appeal from the Alliance Municipal Court Case No. 2008CRB01039

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: September 29, 2009

APPEARANCES:

For Plaintiff-Appellee:

NED CASALE
470 East Market Street
Alliance, Ohio 44601

For Defendant-Appellant:

AARON KOVALCHIK
111 Second Street N.W.
Suite 302
Canton, Ohio 44702

Delaney, J.

{¶1} Appellant Zakiya A. Hawkins appeals her conviction and sentence in the Alliance Municipal Court on one count of child endangering, a misdemeanor of the first degree, in violation of R.C. 2919.22.

STATEMENT OF THE CASE AND FACTS

{¶2} Sherry Henshaw testified at trial that on July 19, 2008, she was shopping at the Family Dollar store in Alliance, Ohio. Ms. Henshaw testified that while walking to the store entrance she heard a baby crying. She attempted to locate the child and observed a black Ford Explorer with a baby in the backseat. Ms. Henshaw testified that she then ran inside in the store, "grabbed any card and I ran up to the cash register." Ms. Henshaw testified that she informed the cashier that there was an unattended child in a big black vehicle. She further testified that she then went outside and waited by the car. After waiting several minutes, she became very upset, entered the store again, and shouted that there was an unattended baby in a big black car outside. The store manager, Christina Helsel, testified that after Ms. Henshaw entered the store and shouted, she went outside and saw the vehicle. She then returned to the store and asked if anyone inside knew who the child belonged to. Appellant exited the store to claim her child, who was ten months old.

{¶3} Officer Donald Bartolet of the Alliance Police Department testified that he received a dispatch regarding an unattended child in a vehicle in the parking lot of Family Dollar. Officer Bartolet further testified that when he arrived and located the vehicle, he observed the driver and passenger windows to be slightly open and a child inside, sweating and crying. Officer Bartolet testified that he was able to reach his arm

through a window, unlock the vehicle and remove the child. He requested a medic because the child was "sweating and crying pretty bad."

{¶4} Officer Bartolet directed a store employee to go inside and find a parent of the child. Officer Bartolet testified that by later using the Weather Channel Internet website, he was able to determine that the temperature at that time was eighty four degrees. Additionally, by reviewing store surveillance he also was able to determine that the child had been in the vehicle for at least twenty minutes. At trial, the parties stipulated to twenty minutes as the length of time which Appellant was in the store.

{¶5} Appellant testified that she stopped at Family Dollar in order to purchase a gift for a baby shower. Appellant testified that she left her child asleep in her vehicle with the front and rear driver side windows open and the front passenger window open. Appellant further testified that she had intended to be in the store for a short time. However, after checking out, she realized that she had neglected to purchase an item. After retrieving the additional item, Appellant testified that she got in line to check out, but was behind four other customers. The cashier, Gina Anderson, informed Appellant that police were outside the store with her child. Appellant testified that she immediately exited the store and claimed her child. After Appellant was unable to turn on the air conditioning in her vehicle, the child was placed in an ambulance and taken to the hospital as a precaution. The child was not given an IV and was discharged without incident. Appellant further testified that Stark County Job and Family Services made contact with her but did not open a case against her.

{¶6} The jury found Appellant guilty as charged. The trial court sentenced Appellant to five days in the Stark County Jail, eighteen days of house arrest, a $250.00 fine and court costs.

{¶7} Appellant has timely appealed, raising one assignment of error:

I.

{¶8} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

{¶9} In her sole assignment of error, Appellant maintains that her conviction is not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶10} When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. See *State v.Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541, 546 (stating, "sufficiency is the test of adequacy"); *State v. Jenks* (1991), 61 Ohio St.3d 259 at 273, 574 N.E.2d 492 at 503. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781;*Jenks*, 61 Ohio St.3d at 273, 574 N.E.2d at 503.

{¶11} Employing the above standard, we believe that the state presented sufficient evidence from which a jury could conclude, beyond a reasonable doubt, that appellant committed the offense of child endangering.

{¶12} “Child Endangering” is defined in R.C. 2919.22 as follows:

{¶13} “(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 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.”

{¶14} Although not stated in R.C. 2919.22, recklessness is the culpable mental state for the crime of child endangering. *State v. McGee* (1997), 79 Ohio St.3d 193, 680 N.E.2d 975, syllabus; *State v. Conley,* Perry App. No. 03-CA-18, 2005-Ohio-3257, ¶20. Recklessness is defined in R.C. 2901.22(C), which states:

{¶15} "(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist."

{¶16} In the case at bar, as noted above, Officer Donald Bartolet testified that Appellant left her infant alone a vehicle for at least twenty minutes on a day in which the temperature was over eighty degrees. Officer Bartolet further testified, and Appellant confirmed, that the vehicle did not have air conditioning and the windows were only left partially down. The infant was crying and sweating. The doors of the vehicle could be unlocked by reaching inside the windows. Sherry Henshaw, Christina Helsel, and Gina Anderson all testified to the same.

{¶17} Viewing the evidence in the case at bar in a light most favorable to the prosecution, we conclude that a reasonable person could have found beyond a reasonable doubt that Appellant had committed the crime of child endangering. We hold, therefore, that the state met its burden of production regarding each element of the crime and accordingly, there was sufficient evidence to support Appellant's conviction.

{¶18} When analyzing a manifest weight claim, this court sits as a "thirteenth juror" and in 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." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. 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.

{¶19} After reviewing the evidence, we cannot say that this is one of the exceptional cases where the evidence weighs heavily against the conviction. Appellant was shopping inside the store and not observing the vehicle. The infant was left alone for at least twenty minutes. The child was unattended in public parking lot where an individual with criminal intentions could have kidnapped or harmed the child. The infant was sweating and crying inside the hot vehicle. Based upon these factors, we find Appellant's conviction for child endangering was not against the weight of the evidence.

{¶20} Appellant's assignment of error is overruled.

{¶21} The judgment of the Alliance Municipal Court, Stark County, Ohio is hereby affirmed.

By: Delaney, J.

Farmer, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ZAKIYA A. HAWKINS	:	
	:	
Defendant-Appellant	:	Case No. 2008-CA-00280
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

_____

HON. SHEILA G. FARMER

_____

HON. JULIE A. EDWARDS