

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

STATE OF OHIO/CITY OF MASON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-11-140
- vs -	:	<u>OPINION</u>
	:	1/25/2010
ROGER D. CAVE,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT  
Case No. 07CRB-1383

Bethany S. Bennett, Mason City Prosecutor, 5950 Mason Montgomery Road, Mason, Ohio 45040, for plaintiff-appellee

Faris & Faris, Matthew V. Faris, 40 South Third Street, Batavia, Ohio 45103, for defendant-appellant

**RINGLAND, J.**

{¶1} Defendant-appellant, Roger D. Cave, appeals his conviction in the Mason Municipal Court for cultivating marijuana and child endangering. We affirm.

{¶2} On November 28, 2007, Officer Brian Layman of the Mason Police Department was dispatched to an apartment located at 5829 West Fountain Circle to conduct a "well-being check" after receiving a call from a woman who indicated "she was dying." Upon his arrival, and after receiving no response at the door, Officer Layman contacted Kimberly Stare, a leasing consultant and office manager of the Twin

Fountains Apartment Community, who indicated appellant lived at the apartment with Judy Cave, his wife, and his 12-year-old daughter. After receiving a key and upon entering the apartment, Officer Layman, instead of finding a woman in need of medical attention, found seven marijuana plants, fluorescent light bulbs, and "gallons of water jugs" laying next to men's shoes and men's clothing in the master bedroom closet.

{¶13} Following a police investigation by Detective Jerome Deidesheimer and Detective Don Cope, both with the Mason Police Department, appellant was charged with, among other things, cultivating marijuana and child endangering. After conducting a jury trial, appellant was found guilty of both charges, sentenced to serve 180 days in jail, and ordered to pay a total of \$700 in fines.

{¶14} Appellant now appeals his convictions, raising one assignment of error.

{¶15} "THE TRIAL COURT ERRED IN ADMITTING DETECTIVE COPE'S TESTIMONY RELATING TO STATEMENTS MADE BY JUDY CAVE BECAUSE SUCH STATEMENTS WERE INADMISSIBLE HEARSAY UNDER EVIDENCE RULE 801(C)."

{¶16} In his sole assignment of error, appellant argues that the trial court erred by permitting Detective Don Cope, a 23-year veteran with the Mason Police Department, to testify regarding statements made by Judy Cave, appellant's wife, and therefore, his convictions must be reversed. This argument lacks merit.

{¶17} A trial court's decision to admit or exclude evidence will not be reversed absent an abuse of discretion. *State v. Williams*, Butler App. No. CA2007-04-087, 2008-Ohio-3729, ¶18; *State v. Alkire*, Madison App. No. CA2008-09-023, 2009-Ohio-2813, ¶35. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶130.

{¶18} Hearsay is defined as "a statement, other than one made by the declarant

while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Hearsay evidence is not admissible as evidence unless it falls within one of the clearly delineated hearsay exceptions. Evid.R. 802; *State v. Hubbard*, Butler App. Nos. CA2006-09-216, CA2006-09-231, 2007-Ohio-6029, ¶13. In addition, with respect to hearsay, the United State Supreme Court has held that the Confrontation Clause prohibits the admission of a testimonial, out-of-court statement made by a witness unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. *State v. Craft*, Butler App. No. CA2006-06-145, 2007-Ohio-4116, ¶50, citing *Crawford v. Washington* (2004), 541 U.S. 36, 68, 124 S.Ct. 1354.

{¶9} However, as this court recently stated, even when "evidence has been improperly admitted in derogation of a criminal defendant's constitutional rights, the admission is harmless beyond a reasonable doubt if the remaining evidence alone compromises overwhelming proof of defendant's guilt." (Internal quotations omitted.) *State v. Wynn*, Butler App. No. CA2009-04-120, 2009-Ohio-6744, ¶20; see, also, *State v. Hutson*, Fayette App. No. CA2006-05-021, CA2006-06-022, 2007-Ohio-4118, ¶30; *State v. Primo*, Butler App. No. CA2004-09-237, 2005-Ohio-3903, ¶17.

{¶10} Appellant claims the trial court erred by allowing Detective Cope to testify, over his objection, that Judy Cave, his wife, claimed she lived with appellant at the West Fountain Circle apartment, that the marijuana "was not hers," that she "didn't grow it," and that it "was her husband's." After a thorough review of the record, and while we may question the trial court's decision to admit such evidence at trial, we find that even when Detective Cope's disputed testimony is excluded from consideration, the remaining evidence against appellant provides overwhelming proof of his guilt.

{¶11} At trial, and as noted above, Officer Layman testified that he entered the

apartment located at 5829 West Fountain Circle to conduct a "well-being check" when he found seven marijuana plants, fluorescent light bulbs, and "gallons of water jugs" laying next to men's shoes and men's clothing in the master bedroom closet. Thereafter, Detective Deidesheimer, a 12-year veteran with the Mason Police Department, testified that he "assumed it was two people living there" because he found men's and women's clothing in the closet where the marijuana was being grown.

**{¶12}** Testimony was also heard from Detective Cope, who stated that that there was a "very pungent" odor of marijuana throughout the apartment, and that the unit contained "numerous pieces of mail," as well as "numerous check stubs," addressed to appellant. In addition, Kimberly Stare, a leasing consultant and office manager of the Twin Fountains Apartment Community, testified that appellant lived at West Fountain Circle apartment with his wife and 12-year-old daughter, and that "all her contact regarding the unit," which included, among other things, rent payments, work orders, and maintenance requests, was with appellant. Furthermore, there was evidence presented indicating appellant listed the West Fountain Circle apartment as his address on his driver's license.

**{¶13}** Based on the foregoing, which we find to be overwhelming proof of appellant's guilt, any error the trial court may have committed by permitting Detective Cope to testify regarding the statements made by Judy Cave, appellant's wife, was harmless. Therefore, appellant's sole assignment of error is overruled.

**{¶14}** Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.