

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

VILLAGE OF BLOOMINGBURG, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-06-009
 :
 - vs - : OPINION
 : 1/25/2010
 :
 RICHARD E. GROVE, :
 :
 Defendant-Appellant. :

CIVIL APPEAL FROM WASHINGTON COURT HOUSE MUNICIPAL COURT
Case No. CRB-0801121

Carole Pontious, 5427 White Oak Road, Bloomington, Ohio 43106, for plaintiff
appellee

John H. Roszmann, P.O. Box 475, Washington C.H., Ohio 43160, for defendant-
appellant

RINGLAND, J.

{¶1} Defendant-appellant, Richard E. Grove, appeals his conviction and
sentence in the Washington Court House Municipal Court for child endangering.

{¶2} Grove lives in the village of Bloomington, Fayette County, Ohio. He and
his girlfriend, Jennifer Roehrich, have three children, the youngest of whom is Jeffrey,
who was two years old at the time of the events in question. Grove and Roehrich are
apparently unmarried. Roehrich is the custodial parent of the three children, and she

and the children live near, but separately from, Grove.

{¶13} On September 29, 2008, Roehrich brought Jeffrey to Grove's home for a cookout. Later, Roehrich left the cookout, with Jeffrey walking five or six feet behind her. Still later, Jeffrey was found wandering in an alley near Grove's house, clad only in a diaper and T-shirt. The Bloomingburg police were called, and upon their arrival, they charged both Roehrich and Grove with child endangering under Bloomingburg Ordinance 636.12(a), a misdemeanor of the first degree.

{¶14} Grove was tried by the bench on the child endangering charge in the Washington Court House Municipal Court. The trial court found Grove guilty as charged and sentenced him accordingly.

{¶15} Grove now appeals, assigning the following as error:

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT OVERRULED HIS MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29."

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN FINDING APPELLANT GUILTY OF ENDANGERING CHILDREN."

{¶10} We shall address Grove's assignments of error together, as they raise similar issues.

{¶11} Grove argues the trial court erred by overruling his motion for acquittal at the close of the state's case-in-chief because the state failed to present sufficient evidence to show that he acted recklessly or breached a duty owed to his two-year-old child. Alternatively, Grove argues his conviction for child endangering was against the manifest weight of the evidence.

{¶12} A trial court's ruling on a Crim.R. 29 motion for acquittal is reviewed under the same standard used for determining whether a verdict is supported by sufficient evidence, i.e., an appellate court, viewing the evidence in a light most favorable to the prosecution, must determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Spicer*, Butler App. No. CA2009-02-036, 2009-Ohio-6173, ¶7, citing *State v. Carroll*, Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117.

{¶13} Unlike a sufficiency of the evidence challenge, a manifest weight challenge concerns the inclination of the greater amount of credible evidence offered at trial to support one side of the issue rather than the other. *Id.* at ¶118. In considering whether a conviction was against the manifest weight of the evidence, an appellate court must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses in determining whether, in resolving conflicts in the evidence, the jury or trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *Id.* This discretionary power can be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. *Id.*

{¶14} Grove was convicted of child endangering under Bloomingburg Ordinance 636.12(a), which is identical to R.C. 2919.22(A), which states, "[n]o person, who is the parent * * * 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."

{¶15} "[P]arents have a legal duty to act to protect their children from harm." *State v. Lott* (1999), 135 Ohio App.3d 198, 202, citing *State v. Sammons* (1979), 58 Ohio St.2d 460. In order to obtain a conviction for child endangering under R.C. 2919.22(A), the state is not required to prove that an accused was the primary caretaker

of the victim; instead, "[c]ontrol alone is sufficient to satisfy R.C. 2919.22(A)." *Lott*, citing *State v. Reed* (May 31, 1991), Lake App. No. 89-L-14-30.

{¶16} "The existence of the culpable mental state of recklessness is an essential element of the crime of endangering children under R.C. 2919.22(A)." *State v. McGee*, 79 Ohio St.3d 193, 1997-Ohio-156, syllabus. "Reckless" is defined in R.C. 2901.22(C) as follows:

{¶17} "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."

{¶18} Grove argues the evidence shows that he had no control over Jeffrey's movements and that Roehrich was Jeffrey's custodial parent, and therefore, the state failed to present sufficient evidence to establish he was guilty of child endangering. He also argues the state failed to demonstrate that he acted recklessly with respect to Jeffrey.

{¶19} However, there was evidence presented to show that Jeffrey was found alone, wearing nothing more than a diaper and T-Shirt; that he was only two years old and thus required close supervision; and this was not the first instance in which he had been found wandering alone in his neighborhood. When the evidence is examined in a light most favorable to the state, as it must be for purposes of ruling on a Crim.R. 29(A) motion, it appears the state presented sufficient evidence to support the trial court's decision to overrule Grove's Crim.R. 29(A) motion for acquittal.

{¶20} Nevertheless, "[a] reviewing court may find a verdict to be against the manifest weight of the evidence even though legally sufficient evidence supports it."

State v. Group, 98 Ohio St.3d 248, 259, 2002-Ohio-7247, ¶76. In this case, the evidence presented weighs heavily against Grove's conviction for child endangering.

{¶21} The mere fact that Grove is Jeffrey's parent did not, as the state contends, impose a duty on Grove to know where the child is at all times, as Grove was Jeffrey's noncustodial parent. Moreover, the fact that Jeffrey was at Grove's home earlier in the day on which Jeffrey was found wandering alone did not impose such a duty on Grove unless there was some evidence or testimony that Grove knew that the child had been placed in his care, and in this case, there was no evidence that Grove was ever tasked with watching Jeffrey on the day in question. Instead, the evidence showed that when Jeffrey left the cookout at Grove's house, he was seen returning to his mother's home, following only five or six feet behind her.

{¶22} Accordingly, Grove's second assignment of error is sustained, which thereby renders moot his first assignment of error. See App.R. 12(A)(1)(c).

{¶23} The trial court's judgment convicting Grove of child endangering and sentencing him for that offense is reversed, and Grove is ordered discharged for that offense.

BRESSLER, P.J., and YOUNG, J., concur.