

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

STATE OF OHIO,	:	APPEAL NO. C-130447
	:	TRIAL NO. 11-CRB12885B
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CRYSTAL ELAM,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Crystal Elam has appealed from the trial court’s entry convicting her of child endangering. Two Cincinnati police officers working an off-duty detail witnessed Elam pull into the parking lot of an apartment complex known for high criminal and drug activity. Elam remained in the parking lot for approximately five minutes, and then left without having any contact with a resident of the complex. The officers initiated a traffic stop of Elam’s vehicle for the purpose of issuing a trespass warning. Elam’s 12-year-old daughter was a passenger in her vehicle. After receiving the trespass warning, Elam gave consent for the officers to search her vehicle. A corner of a plastic bag containing white residue was found underneath the passenger seat mat of the vehicle. Upon further questioning, Elam

stated that she had intended to buy heroin from someone in the apartment complex, but that the person had refused to sell after viewing the officers in the parking lot.

Elam was charged with child endangering and possession of drug paraphernalia. She filed a motion to suppress her confession and the evidence found during the search of her vehicle. The trial court denied Elam's motion to suppress, and, following a jury trial, she was found guilty of child endangering but acquitted of the drug-paraphernalia charge.

In her first assignment of error, Elam argues that the trial court erred in denying her motion to suppress. We are not persuaded. The officers' traffic stop of Elam was constitutionally justified. Elam had visited an apartment complex known for high drug activity. The officers had reasonable suspicion to believe that Elam had been engaged in criminal activity and to stop her for criminal trespass. *See State v. Davis*, 8th Dist. Cuyahoga No. 90759, 2008-Ohio-6150, ¶ 13. Elam's consent to the warrantless search was also constitutionally valid under the totality of the circumstances. *See State v. Robinette*, 80 Ohio St.3d 234, 241, 685 N.E.2d 762 (1997); *State v. Smith*, 1st Dist. Hamilton No. C-061032, 2007-Ohio-3786, ¶ 13. A reasonable person in her situation would have believed that they were free to refuse consent and leave.

With respect to the validity of Elam's confession, we find that Elam had not been subjected to a custodial interrogation, and, consequently, that her confession was not subject to suppression on the ground that she had not been read her *Miranda* rights. *See State v. Rice*, 1st Dist. Hamilton Nos. C-090071, C-090072, and C-090073, 2009-Ohio-6332, ¶ 11. Nor was her confession involuntarily given under the totality of the circumstances. *See State v. Tensley*, 1st Dist. Hamilton Nos. C-

110452 and C-110453, 2012-Ohio-4265, ¶ 14. The trial court did not err in denying Elam's motion to suppress, and the first assignment of error is overruled.

In her second assignment of error, Elam argues that the prosecutor committed misconduct during closing argument by improperly commenting on her prior convictions. During closing argument, the prosecutor stated that Elam's prior convictions strengthened the state's case. While marginally improper, such a comment, presented in light of the other evidence adduced at trial, did not prejudicially affect Elam's substantial rights and deprive her of a fair trial. *See State v. Smith*, 130 Ohio App.3d 360, 366, 720 N.E.2d 149 (1st Dist.1998). The second assignment of error is overruled.

In her third assignment of error, Elam argues that the trial court's admission into evidence of a police report authored by Officer Hesselbrock, but summarizing an admission that Elam had given to Officer Schwab, was in error and deprived her of her right to confront witnesses. The trial court erred by admitting the police report into evidence. *See State v. Dendak*, 5th Dist. Stark No. 2013 CA 00065, 2013-Ohio-5694, ¶ 25. But Elam was not prejudiced by this error or deprived of her right to confront witnesses. The report contained evidence cumulative to that introduced at trial. And both Officer Hesselbrock and Officer Schwab testified at trial and were subject to cross-examination by Elam on any statements attributable to them contained in the report. This assignment of error is overruled.

In her fourth assignment of error, Elam contends that she was deprived of the effective assistance of counsel. She argues that her counsel was ineffective for failing to object to the prosecutor's comments during closing argument concerning her prior convictions. Even if counsel's performance was considered deficient, we cannot conclude that Elam suffered any resulting prejudice. In light of the evidence

presented at trial, including Elam's confession, the outcome of the proceedings would not have been different but for counsel's failure to object to the prosecutor's statements. *See Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Nor was Elam prejudiced by her counsel's failure to move for an acquittal at the close of all evidence. As discussed under the fifth and sixth assignments of error, Elam's conviction was supported by sufficient evidence, and the outcome of the proceedings would not have been different had counsel moved for an acquittal. The fourth assignment of error is overruled.

In her fifth and sixth assignments of error, Elam argues that her conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. Following our review of the record, we find that, viewing all evidence and reasonable inferences in the light most favorable to the prosecution, the jury could reasonably have found all the elements of child endangering under R.C. 2919.22(A) proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). And this was not the rare case in which the jury lost its way and created such a manifest miscarriage of justice in convicting Elam that her conviction must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The jury was in the best position to judge the credibility of the witnesses. It was entitled to rely on the testimony offered by Officers Schwab and Hesselbrock and to reject Elam's recantation of her confession as self-serving. Elam's conviction was supported by both the sufficiency and the weight of the evidence. The fifth and sixth assignments of error are overruled, and the judgment of the trial court is affirmed.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., FISCHER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on March 19, 2014
per order of the court _____.
Presiding Judge