

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

STATE OF OHIO,	:	APPEAL NO. C-150570
Plaintiff-Appellee,	:	TRIAL NO. 15CRB-21337
vs.	:	
CHASTITY GAMBLE,	:	<i>JUDGMENT ENTRY.</i>
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.

This is an appeal from a conviction for child endangerment following a bench trial. We affirm the trial court's judgment.

Chastity Gamble was charged with child endangerment after she overdosed on heroin while she and her infant son were passengers in a car driven by her husband. Ms. Gamble shot up with heroin shortly before entering the car and soon after became unresponsive. A witness called 911 and later testified that the baby was unattended for ten to 15 minutes as paramedics worked to revive Gamble. The only real dispute in the evidence concerned the circumstances surrounding her heroin use. At trial, Ms. Gamble testified that she had spent the night at a drug house, called her husband to pick her up in the morning and shot up with heroin right before he arrived. She told a different story to an officer who interviewed her after her overdose at the hospital. According to the officer, she said that her husband had driven her around to buy drugs before she had overdosed. One of the paramedics testified that Mr. Gamble had told him a similar story at the scene of the emergency.

In her first assignment of error, Ms. Gamble challenges two evidentiary decisions made by the court: allowing testimony from the paramedic about statements her husband made and not allowing her testimony about her husband's methadone use.

Ms. Gamble claims that the paramedic's testimony was inadmissible hearsay. But "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, * * * or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" are an exception to the hearsay rule. Evid.R. 803(4); *see also* Weissenberger & Stephani, *Weissenberger's Ohio Evidence Treatise*, Section 803.49 (2015) (exception does not require statements to be made by a patient "as long as the third person's statements are in subjective contemplation of treatment or diagnosis"). The statements of which Ms. Gamble complains fall under this exception because they were statements made to the paramedic during his attempt to ascertain the likelihood that her symptoms were from a drug overdose such that he needed to administer Narcan. The court did not err in admitting these statements.

Ms. Gamble contends that the trial court erred when it did not permit her to testify that her husband was using methadone, not heroin. In her view, she was not reckless because her husband was on methadone—not heroin—and able to attend to the child, regardless of her own condition. We find that such evidence would have been of little, if any, relevance. The state's theory was that, regardless of what drugs Mr. Gamble may or may not have taken, Ms. Gamble's overdose created an emergency that caused the child to be left unattended for ten to 15 minutes on a gravel parking lot. The court acted within its sound discretion in excluding the evidence. *See State v. Zamorski*, 141 Ohio App.3d 521, 524, 752 N.E.2d 288 (1st Dist.2000). Ms. Gamble's first assignment of error is overruled.

In her second assignment of error, Ms. Gamble asserts that her counsel was ineffective for failing to file a motion to suppress her statements to a police officer at the

hospital. She claims that her statements were involuntary because she was under the influence of heroin when she spoke with police. But when the statements were made, Ms. Gamble had been revived and was at the hospital. Our record does not demonstrate that the statements were involuntary, and as a consequence, does not show that the motion would have been granted. *See State v. Riley*, 7th Dist. Mahoning No. 13MA180, 2015-Ohio-94, ¶ 17. The second assignment of error is overruled.

In her third assignment of error, Ms. Gamble claims that her conviction was based on insufficient evidence. The statute under which Ms. Gamble was convicted, R.C. 2919.22(A), provides that “no 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.” Here the uncontroverted evidence showed that Ms. Gamble had used heroin, she had had her infant son in the car with her while under the effects of heroin, she had overdosed, and as a result, her son had been left unattended while her life was being saved. We have little difficulty in concluding that this evidence was sufficient to meet the elements of the offense. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Ms. Gamble’s third assignment of error is overruled.

In her fourth assignment of error, Ms. Gamble argues that her conviction was against the manifest weight of the evidence. She contends that the court erred by failing to believe her testimony that she had used the heroin prior to calling her husband and asking to be picked up. Under her theory, she did not endanger her son because she did not know that the infant was going to be with her husband when he picked her up. The trial court, however, is in the best position to determine the credibility of evidence, particularly with regard to witness testimony. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 116; *State v. Williams*, 1st Dist. Hamilton Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶ 45. Based upon our review of the record—including a weighing of the evidence and all reasonable inferences, and

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consideration of the credibility of the witnesses—we cannot conclude that the trial court so clearly lost its way as to create a manifest miscarriage of justice. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The fourth assignment of error is overruled.

We overrule each of the assignments of error and affirm the judgment of the trial court.

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

DEWINE, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on August 24, 2016

per order of the court _____.

Presiding Judge