



**In the Missouri Court of Appeals  
Eastern District  
DIVISION TWO  
OPINION SUMMARY**

STATE OF MISSOURI,	)	No. ED91172
	)	
Respondent,	)	
	)	Appeal from the Circuit Court of
	)	Audrain County
	)	
vs.	)	Cause No. 07U1-CR00629
	)	
DAVID E. POWER II,	)	Honorable Linda Robinson Hamlett
	)	
	)	
Appellant.	)	Filed: March 10, 2009
	)	

David E. Power II (hereinafter, “Appellant”) appeals from the trial court’s judgment in a court-tried case where he was convicted of two counts of endangering the welfare of a child in the second degree, Section 568.050.1(4) RSMo (2000),<sup>1</sup> one count of possession of less than thirty-five grams of marijuana, Section 195.202.3, and one count of possession of drug paraphernalia, Section 195.233. Appellant raises three points on appeal, all of which challenge the sufficiency of the evidence to sustain his convictions.

**AFFIRMED IN PART, REVERSED IN PART.**

Division II Holds: There was sufficient evidence to convict Appellant of possession of marijuana in light of Appellant’s constructive possession of the drugs found in his friend’s home. However, there was insufficient evidence to sustain Appellant’s conviction for possession of drug paraphernalia because the State failed to prove beyond a reasonable doubt that Appellant constructively possessed the smoking devices found on the premises. Further, the State failed to prove beyond a reasonable doubt that Appellant encouraged, aided, or caused his friend’s children to enter into a structure that was a public nuisance.

Opinion by: George W. Draper III, Judge

Roy L. Richter, P.J. and

<sup>1</sup> All statutory references are to RSMo (2000) unless otherwise indicated.

Lawrence E. Mooney, J.,  
concur

Attorney for Appellant: Nancy A. McKerrow

Attorney for Respondent: Jason H. Lamb

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.  
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND  
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