

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HIGHLAND COUNTY

STATE OF OHIO,	:	Case No. 18CA14
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
JUSTIN KYLE ANDERSON,	:	
Defendant-Appellant.	:	<b>RELEASED: 01/23/2019</b>

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APPEARANCES:

Bruce S. Wallace, Mt. Orab, Ohio, for appellant.

Anneka P. Collins, Highland County Prosecuting Attorney, Hillsboro, Ohio, for appellee.  
Harsha, J.

{¶1} A jury found Justin Kyle Anderson not guilty of failure to comply with the order or signal of a police officer, but guilty of aggravated trafficking in drugs in the vicinity of a juvenile, aggravated possession of drugs, two counts of endangering children, and it found that certain monies were subject to forfeiture. The trial court sentenced Anderson to prison, forfeited the monies, and imposed a fine.

{¶2} Anderson contends that none of his four convictions were supported by sufficient evidence and were against the manifest weight of the evidence. However, the trial record refutes those contentions. Anderson was driving recklessly at speeds close to 100 m.p.h. with two small children in the back seat. His suitcase in the trunk of his car contained illegal drugs packaged in cellophane baggies, and \$3,025.00 in cash, \$2,360.00 of which was in twenty-dollar bills. Based on this evidence the jury reasonably concluded that the state had established the elements of these offenses beyond a reasonable doubt; it did not clearly lose its way or create a manifest miscarriage of justice.

{¶3} We affirm his convictions.

### I. FACTS

{¶4} The Highland County Grand Jury returned an indictment charging Anderson with one count of failure to comply with the order or signal of a police officer in violation of R.C. 2921.331(B), a third-degree felony; one count of aggravated trafficking in drugs in the vicinity of a juvenile in violation of R.C. 2925.03(A)(2), a second-degree felony; one count of aggravated possession of drugs in violation of R.C. 2925.11, a fifth-degree felony; two counts of endangering children in violation of R.C. 2919.22(A), a first-degree misdemeanor, and that certain monies may be subject to forfeiture. Anderson pleaded not guilty and the matter proceeded to a jury trial, which produced the following evidence.

{¶5} Highland County Deputy Sheriff Gilbert was traveling on State Route 138 when he observed a speeding vehicle traveling the opposite direction. Radar confirmed that the vehicle was travelling at 70 m.p.h. Deputy Sheriff Gilbert activated his lights and siren and attempted to make a traffic stop, but the vehicle continued speeding, reaching over 100 m.p.h. The vehicle crossed double yellow lines, forced another vehicle off the roadway, made several turns on various roads, and ultimately pulled into a driveway and parked between two large vehicles that obstructed it from view. Gilbert saw the vehicle in the driveway and pulled in. Gilbert identified the person sitting in the driver's seat as Larissa Taylor and the person in the front passenger's seat as Justin Anderson. Two smaller children, ages ten and four were in the backseat.

{¶6} Gilbert talked to Taylor who admitted that she did not know anyone at the residence and she had pulled into the driveway to hide from him. Then Gilbert spoke to

Anderson who told him that they were not running from Gilbert; they were here visiting a friend. Gilbert confronted Anderson with what Taylor had said, at which point Anderson admitted to lying and apologized. As Gilbert placed Taylor into custody, she started yelling at Anderson to admit that he was the one driving and she had been trying to get him to stop the vehicle. When Anderson admitted he was the one driving, Gilbert placed him under arrest.

{¶7} After his arrest Anderson asked law enforcement to retrieve contact lens solution from his suitcase, which was in the trunk of the vehicle. Gilbert testified that Anderson's suitcase also contained an unlabeled prescription bottle containing three different types of pills: 4 capsules that were loose inside the bottle, 42 small round pills that were also loose inside the bottle, and 10 pills that were in a separate cellophane baggy inside the bottle, for a total of 56 pills. Gilbert testified that sometimes drug dealers hand out loose pills and sometimes they will pre-package them in small cellophane baggies. Gilbert obtained a report from the Ohio Automated Rx system, which revealed that Anderson had a prescription for the 10 pills that were in a separate cellophane baggy, but not for 4 capsules or 42 round loose pills. A subsequent test by the Ohio Bureau of Criminal Investigation (BCI) confirmed that each of the 42 round pills contained 20 milligrams of Amphetamine and the 10 pills in the separate baggy contained oxycodone. BCI did not test the 4 capsules.

{¶8} Deputy Sheriff Gilbert testified that his professional training addressed drug trafficking, including what to look for from someone suspected of drug trafficking. Gilbert testified that pills normally sell for \$10 to \$20. Gilbert suspected Anderson of drug trafficking because his 10 prescription pills were packaged in a cellophane baggy

inside of the pill bottle, and because Anderson had \$3,025.00 in cash, \$2,360.00 of which was in twenty-dollar bills – a denomination often used to purchase pills. When asked what he noticed about the pills that made him believe they were for trafficking, Gilbert testified, “Just the way that they were pre-packaged inside the pill bottle \* \* \*

And then once the money, the amount of money that was found on Justin it all fit together.”

{¶9} Larissa Taylor testified that she was Anderson’s girlfriend at the time of the traffic stop, but they had since broken up. Taylor testified that she and Anderson were planning to drop the children off with the children’s mother and then attend a hockey game in Cincinnati. Taylor testified that Anderson was driving his car. When she saw the sheriff’s lights, she told Anderson to stop but he refused. Eventually he pulled into a driveway and switched seats so that Taylor was in the driver’s seat. Taylor testified that they had Anderson’s suitcase and her bag with them because they were planning to spend the night in Cincinnati after the game. She was unaware Anderson had pills in his suitcase. Taylor testified that she did not know Anderson had over \$3,000 in cash on him, but she expected him to have money because they were taking an overnight trip; besides, he often had large amounts of cash because he owns rental property and a construction business.

{¶10} The jury found Anderson not guilty of failure to comply with the order or signal of a police officer, but guilty of aggravated trafficking in drugs in the vicinity of a juvenile, aggravated possession of drugs, and two counts of child endangering. The jury found that the \$3,025.00 was subject to forfeiture because it was used in aggravated trafficking of drugs. The trial court merged the counts of aggravating trafficking in drugs

and aggravated possession of drugs and sentenced Anderson on the aggravated trafficking conviction. The trial court sentenced him to a total aggregate prison term of 30 months, forfeited the monies and imposed a fine.

## II. ASSIGNMENTS OF ERROR

{¶11} Anderson asserts the following assignments of error for our review:

- I. THE APPELLANT'S CONVICTION[S] IN THE INSTANT MATTER ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE.
- II. THE UNDERLYING CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

## III. LAW AND ANALYSIS

### Sufficiency and Manifest Weight of the Evidence

#### A. Standard of Review

{¶12} Anderson asserts that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.

{¶13} "When a court reviews the record for sufficiency, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Maxwell*, 139 Ohio St.3d 12, 9 N.E.3d 930, ¶ 146, 2014-Ohio-1019, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A sufficiency assignment of error challenges the legal adequacy of the state's prima facie case, not its rational persuasiveness. *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 17. "That limited review does not intrude on the jury's role 'to resolve conflicts in testimony, to weigh the evidence, and to draw

reasonable inferences from basic facts to ultimate facts.’ ” *Musacchio v. United States*, — U.S. —, 136 S.Ct. 709, 715, 193 L.Ed.2d 639 (2016), quoting *Jackson* at 319, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶14} By contrast in determining whether a criminal conviction is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that reversal of the conviction is necessary. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119. In order to satisfy this test, the state must introduce substantial evidence on all the elements of an offense, so that the jury can find guilt beyond a reasonable doubt. See *State v. Eskridge*, 38 Ohio St.3d 56, 526 N.E.2d 304, syllabus 2 (1988).

{¶15} Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence. *Thompkins* at 387, 678 N.E.2d 541. However, we are reminded that generally, it is the role of the jury to determine the weight and credibility of evidence. See *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 132. “ ‘A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.’ ” *State v. Reyes-Rosales*, 4th Dist. Adams No. 15CA1010, 2016-Ohio-3338, ¶ 17, quoting *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23. We defer to the trier of fact on these evidentiary weight and credibility issues because it is in the best position

to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility. *Id.*; *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 18.

## B. Analysis

### 1. Aggravated Trafficking in Drugs in the Vicinity of a Juvenile

**{¶16}** R.C. 2925.03(A)(2) criminalizes aggravated trafficking in drugs in the vicinity of a juvenile:

(A) No person shall knowingly do any of the following: \* \* \*

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

\* \* \*

**{¶17}** The state had to prove that Anderson (1) knowingly, (2) transported or prepared for distribution, (3) a controlled substance, (4) knowing that the controlled substance was intended for sale or resale by the offender or another person. In order to enhance the degree of the crime, the state also had to prove that the crime was committed in the vicinity of a juvenile. An offense “in the vicinity of a juvenile” is one that occurs within 100 feet of a juvenile or within a juvenile’s view. R.C. 2925.01(BB).

**{¶18}** Anderson contends that there was insufficient evidence to support his conviction for aggravated trafficking in drugs because the state presented no evidence that the pills were in his possession or that he was engaged in drug trafficking activity.

**{¶19}** The state introduced evidence that the pill bottle was in Anderson’s suitcase, that it contained his separately packaged prescription medication and 42 other non-prescription pills containing Amphetamine, a Schedule II controlled substance, and

that Anderson had a large amount of cash in twenty-dollar denominations. Anderson contends that there was no evidence tying the cash to any drug activity. Granted Taylor testified that Anderson owned rental properties and a construction company, so that it was not unusual for him to have large amounts of cash. However, Gilbert testified that he was trained in identifying drug trafficking activities and that illegal pills separated into baggies are indicative of drug trafficking. Gilbert also testified that twenty-dollar bills are a common denomination used in drug trafficking and Anderson had \$2,360.00 in twenty-dollar bills. Two young children were in the back seat, well within 100 feet of the packaged drugs that Anderson was transporting. Based on this evidence a reasonable jury could conclude that the state had established the essential elements of this offense beyond a reasonable doubt; likewise, the jury did not clearly lose its way or create a manifest miscarriage of justice.

## 2. Aggravated Possession of Drugs

**{¶20}** To be convicted of aggravated possession of drugs, the defendant must “knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” R.C. 2925.11(A) and (C)(1) (identify Schedule I or II drugs, including Amphetamine, as an aggravating factor). Anderson contends there is no evidence to prove he possessed the drugs.

“Possession of drugs can be either actual or constructive.” “ ‘A person has ‘actual possession’ of an item if the item is within his immediate physical possession.’ ” “A person has ‘constructive possession’ if he is able to exercise dominion and control over an item, even if the individual does not have immediate physical possession of it.” “For constructive possession to exist, ‘[i]t must also be shown that the person was conscious of the presence of the object.’ ” “Finally, the State may prove the existence of the various elements of constructive possession of contraband by circumstantial evidence alone.” “Absent a defendant's admission, the surrounding facts and circumstances, including the defendant's actions,



are evidence that the trier of fact can consider in determining whether the defendant had constructive possession.” (Citations omitted.)

*State v. Frye*, 2018-Ohio-894, 108 N.E.3d 564, ¶ 51 (3rd Dist.).

{¶21} Here the state’s evidence was that non-prescription pills containing Amphetamine, a Schedule II drug, along with Anderson’s prescription medication were in Anderson’s suitcase in the trunk of his car. During the traffic stop Anderson told law enforcement that the black suitcase was his. Taylor testified that the suitcase belonged to Anderson, nothing she owned was in it, and the drugs did not belong to her. This was sufficient evidence to establish Anderson’s constructive possession of the drug in the suitcase in the trunk of his car. See *State v. Jamison*, 2d Dist. Montgomery No. 22177, 2008-Ohio-2065, ¶ 29 (state presented sufficient evidence that defendant was in constructive possession of drugs in suitcase in trunk of car). Based on this evidence a reasonable jury could conclude that the state had established the essential elements of this offense beyond a reasonable doubt; likewise, the jury did not clearly lose its way or create a manifest miscarriage of justice.

### 3. Endangering Children

{¶22} Anderson was convicted of two counts of endangering children because there were two children, ages 4 and 10 in the back seat of his car during the incident.

Endangering Children is a violation of R.C. 2919.22(A):

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one 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. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a

recognized religious body.

{¶23} To prove Anderson was guilty of endangering children, the state must show that he was (1) the parent, guardian custodian or person having custody or control of a child under eighteen, (2) that he created a substantial risk to the health or safety of the child, (3) by violating a duty of care.

{¶24} Deputy Sheriff Gilbert testified that Anderson's vehicle was speeding, reaching over 100 m.p.h. Gilbert testified that the vehicle crossed double yellow lines and forced another vehicle off the roadway. Taylor testified that Anderson was driving the vehicle and Gilbert testified that Anderson admitted that he was the person driving the vehicle. Anderson was transporting the children to their mother's home. He was the father of one of the two children; the other was his child's half-sibling.

{¶25} Anderson contends that because the jury did not convict him of failure to comply with the order or signal of a police officer, the jury must not have believed that he was the driver of the vehicle. However, there is nothing in the record to support Anderson's speculation; the jury may have determined that Anderson did not see or hear the siren and lights. Moreover, even if these two verdicts were inconsistent, Anderson's endangering children conviction may still be valid:

In criminal cases, Ohio follows the general rule that "consistency between the verdicts on the several counts of an indictment \* \* \* is unnecessary where the defendant is convicted on one or some counts but acquitted on others, and the conviction will generally be upheld irrespective of its rational incompatibility with the acquittal." The specific rule in Ohio is set forth in *Browning v. State* (1929), 120 Ohio St. 62, paragraph four of the syllabus, as follows:

The several counts of an indictment containing more than one count are not interdependent. A verdict responding to a designated count will be construed in the light of the count designated, and no other. An inconsistency in a verdict does not arise out of inconsistent

responses to different counts, but only arise out of inconsistent responses to the same count.

This language has been reiterated in *State v. Brown* (1984), 12 Ohio St.3d 147; *State v. Adams, supra*; and *State v. McNicol* (1944), 143 Ohio St. 39. (Citations omitted.)

*State v. Stanley*, 4th Dist. Ross No. 1569, 1991 WL 13785, \*2 (Jan. 10, 1991).

{¶26} Based on this evidence a reasonable jury could conclude that the state had established the essential elements of this offense beyond a reasonable doubt; likewise, the jury did not clearly lose its way or create a manifest miscarriage of justice.

#### IV. CONCLUSION

{¶27} Anderson has not established any error by the trial court in convicting and sentencing him. Having overruled his assignments of error, we affirm his convictions and sentence.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
William H. Harsha, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**