

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

COREY J. FLOYD,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0106

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 16 CR 1071

BEFORE:

Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor, *Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Edward A. Czopur, DeGenova & Yarwood, LTD., 42 N. Phelps Street, Youngstown, Ohio 44503 for Defendant-Appellant.

Dated: November 1, 2019

Robb, J.

{¶1} Defendant-Appellant Corey Floyd appeals from his convictions for trafficking heroin and fentanyl and having a weapon while under disability. Appellant asserts the convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. For the reasons expressed below, the convictions are affirmed.

Statement of the Facts and Case

{¶2} On July 28, 2016 the Mahoning Valley Law Enforcement Task Force executed a search warrant at 4005 Hopkins Drive, Youngstown, Mahoning County, Ohio. Tr. 205, 252, 276, 294, 304. Appellant leased the property from Shadetree Holdings, LLC; he was the only person listed on the lease as the lessee. Tr. 192, 194.

{¶3} Appellant and his girlfriend, Brittney Bradley, were removed from the residence prior to the Task Force performing the search.

{¶4} The house had three bedrooms. The master bedroom was on the second floor. A search of that bedroom resulted in the finding of a Sig Sauer 9mm semiautomatic handgun, .380 magazine, five rounds of .380 ammunition, 23 rounds of 9mm ammunition, and a wallet containing Appellant's ID and money. Tr. 209-216. The 9mm semiautomatic was found in an open hole in the wall where a register would be located. Tr. 209-210. Twenty-three rounds of 9mm ammunition were found in a nightstand that contained male belongings. Tr. 213. The wallet containing money, \$790.00, Appellant's ID, and bank cards was found on the TV stand in that bedroom. Tr. 216, 279. In a nightstand containing female belongings, .380 ammunition and magazine were found.

{¶5} The search of the kitchen area resulted in finding multiple items associated with drug trafficking. On top of the kitchen cabinet sandwich baggies, two black small digital scales with white residue, a large scale, two sifters, a face mask, a bag of white powder and a bag of brown powder were found. Tr. 255-259, 262. The Detective Sergeant who found these items was a drug investigator with the Task Force and explained, from his experience, these items were used for trafficking by a mid to upper

level drug dealer. He indicated that the two black small scales are commonly used in the distribution of narcotics to weigh out smaller amounts to be packaged and sold by street level drug dealers. Tr. 258-259. The baggies found are often used to bag the contraband and sell it. Tr. 266. The larger scale found is used to weigh larger amounts and from Detective Sergeant's experience somebody that would have a scale that large would use it to break down a larger amount, "like maybe a half a key or something, and make it into ounce quantities, quarter ounces." Tr. 260-261. The sifters are used for mixing product together and the face mask is used to make sure the person mixing the product does not inhale it; "it's a common practice for skilled people who are in the trade of trafficking in drugs to protect themselves, as well as using rubber gloves when they're cutting the materials." Tr. 261-262. The bag of white powder and bag of brown powder were in the sandwich bag box that was found on top of the kitchen cabinet. Tr. 262-263. The Detective Sergeant testified that he immediately suspected these powders were controlled substances. Tr. 263. The white substance he believed to be either cocaine or fentanyl. Tr. 264. The brown substance he believed to be heroin. Tr. 264.

{¶16} When the first floor bedroom was searched \$6,412.00 was found. Tr. 347. An officer testified that this bedroom was not occupied, rather it was used for storage. Tr. 350. Both male and female clothing were found in the bedroom. Tr. 350. Officers testified that from their experience it is common practice for drug traffickers to keep the proceeds of their drug trafficking trade separate from their personal effects. Tr. 317, 348-350.

{¶17} The white and brown substances found in the kitchen were sent to BCI. The white substance weighed 13.33 grams, plus or minus 0.04 grams, and chemical testing determined it was fentanyl, a schedule II substance. Tr. 323-324. The brown substance weighed 13.15 grams, plus or minus 0.04 grams, and through chemical testing was determined to be heroin, a schedule I substance. Tr. 324.

{¶18} The firearm found in the master bedroom was tested by the Task Force and was determined to be operable. Tr. 336-337.

{¶19} As a result of the items located in the house, Appellant was indicted for trafficking heroin in violation of R.C. 2925.03(A)(2)(C)(6)(e), a second-degree felony; trafficking drugs in violation of R.C. 2925.03(A)(2)(C)(1)(a), a fourth-degree felony; and having a weapon while under disability in violation of R.C. 2923.13(A)(3)(B), a third-

degree felony. 9/22/16 Indictment. The indictment contained a forfeiture specification, R.C. 2981, for the money found in the house.

{¶10} Following a jury trial, Appellant was found guilty of all three counts of the indictment. 8/27/18 J.E. At sentencing, the state and Appellant agreed to a recommended sentence, which the trial court accepted and imposed. Sentencing Tr. 8. Appellant was sentenced to an aggregate 6 years. He received 4 years for the trafficking heroin conviction, 12 months for the trafficking drugs conviction, and 24 months for the having a weapon while under disability conviction. 9/4/18 J.E.; Sentencing Tr. 8-9. The 12 month and 24 month sentences were ordered to run concurrent to each other, but consecutive to the 4 year sentence. 9/4/18 J.E.; Sentencing Tr. 8-9. Appellant was informed that he would be subject to a 3 year term of post release control. 9/4/18 J.E.; Sentencing Tr. 9.

{¶11} Appellant timely appealed from his conviction.

First Assignment of Error

“Appellant’s convictions were based on insufficient evidence as the state failed to prove that Appellant was in possession of the substances which he was purportedly trafficking, and/or the firearm found at his residence, and/or that he did not intend to sell the controlled substances.”

{¶12} Appellant argues no evidence was presented that he constructively possessed the drugs or the weapon. He contends mere access to the items is not evidence of possession; there must be evidence that he was conscious of contraband. Furthermore, as to the drug trafficking charges, he argues that even if there was evidence he possessed the drugs there was no evidence he did anything more than possess the drugs; there was no evidence the drugs were prepared for distribution with intent to sell.

{¶13} The state counters arguing exercising dominion or control over an object is possession and he was the only lessee listed on the lease agreement.

{¶14} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In essence, sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Whether the evidence is legally sufficient to

sustain a verdict is a question of law. *Id.* In reviewing the record for sufficiency, the 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. *Smith*, 80 Ohio St.3d at 113.

{¶15} Possession is statutorily defined as “having control over a thing or substance.” R.C. 2925.01(K). However, possession “may not be inferred solely from the mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.” R.C. 2925.01(K).

{¶16} Possession can be either actual or constructive. *State v. Cope*, 7th Dist. Columbiana No. 17 CO 0005, 2018-Ohio-2479, ¶ 43. Constructive possession means immediate access to the item; “To establish constructive possession, the state must prove that the defendant was conscious of the object, and able to exercise dominion or control over it even though that object may not be within his immediate physical possession.” *State v. St. John*, 7th Dist. Belmont No. 09 BE 13, 2009-Ohio-6248, ¶ 19, citing *State v. Hankerson*, 70 Ohio St.2d 87, 90-91, 434 N.E.2d 1362 (1982). See also *State v. Butler*, 42 Ohio St.3d 174, 175, 538 N.E.2d 98 (1989). Ownership does not need to be proven and circumstantial evidence can be relied upon to establish constructive possession. *State v. Sykes*, 7th Dist. Mahoning No. 16 MA 0162, 2018-Ohio-983, ¶ 17, citing *State v. Treesh*, 90 Ohio St.3d 460, 485, 739 N.E.2d 749 (2001) (circumstantial evidence has the same probative value as direct evidence); *State v. Blue*, 9th Dist. Lorain No. 10CA009765, 2011-Ohio-511, ¶ 17 (Ownership need not be proven.).

{¶17} Possession also can be individual or joint. *State v. Wolery*, 46 Ohio St.2d 316, 332, 348 N.E.2d 351 (1976).

1. Weapon While Under Disability - Possession

{¶18} Appellant was charged with and convicted of R.C. 2923.13(A)(3), which prohibits having a weapon while under disability. To “have” a weapon under disability requires either actual or constructive possession. *State v. Hardy*, 60 Ohio App.2d 325, 327, 397 N.E.2d 773 (8th Dist.1978).

{¶19} The weapon, a Sig Sauer 9mm semiautomatic handgun, was found in the master bedroom of the house located at 4005 Hopkins Road that was leased solely in Appellant’s name. The weapon was found in an open hole in the wall in the duct work

where a register would be located. Two nightstands were in that bedroom; one nightstand contained items that typically belong to a female and one nightstand contained items that typically belong to a male. In the nightstand that contained items typically belonging to a male, 23 rounds of 9mm ammunition were found. That is the same ammunition used for the weapon found in the hole in the wall. Also, in this bedroom a wallet was found containing Appellant's ID and bank cards.

{¶20} This evidence when viewed in the light most favorable to the prosecution could lead any rational trier of fact to find Appellant possessed the weapon. In other words, the evidence indicates Appellant was conscious of the weapon and was able to exercise dominion or control over it. Although the firearm was not necessarily in plain view, it was readily accessible to Appellant when he was in the master bedroom of the house. See *State v. English*, 1st Dist. Hamilton No. C-080872, 2010-Ohio-1759, ¶ 33 (finding the evidence demonstrated English's constructive possession of the firearm, as the "revolver was located in a room containing English's personal belongings, including drugs that he had exercised control over, and the revolver's location was such that English had immediate access to it").

2. Trafficking Drugs - Possession

{¶21} Appellant was convicted of trafficking heroin and fentanyl in violation of R.C. 2925.03(A)(2). To be guilty of trafficking under R.C. 2925.03(A)(2), the offender must knowingly prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance knowing, or having reason to know, that the controlled substance is intended for sale. This statute requires possession of the controlled substance, either constructive or actual. *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181, ¶ 30. See also *State v. Dukes*, 8th Dist. Cuyahoga No. 95185, 2011-Ohio-1568, ¶ 14, citing *State v. Williams*, 117 Ohio App.3d 488, 492, 690 N.E.2d 1297 (1st Dist.1996) ("Constructive possession is sufficient for conviction of drug trafficking under R.C. 2925.03.").

{¶22} Here, the heroin and fentanyl were found in the kitchen on top of a cabinet with three scales, two sifters, a face mask, and baggies. As stated above, Appellant leased this property in his name only. Appellant and his girlfriend, Brittney Bradley, were home when the search warrant was executed. There was evidence that Brittney was

living with Appellant. In addition to the master bedroom, there was a first floor bedroom that contained a bed. In this bedroom, \$6,412.00 was found. Questioning by Appellant insinuated that someone, other than him, occupied this bedroom. However, one officer testified that this room appeared to be an extra storage area. Tr. 350. That officer indicated there were both male and female clothing in this bedroom, but it did not appear to be lived in. Tr. 350-351. Furthermore, Officer Kaschak and Detective Sergeant Whited both testified that drug traffickers keep drugs and the proceeds separate from their personal effects. Tr. 317, 348-350. Detective Sergeant Whited further explained:

In my mind with everything that I was gathering, the fact that the money was separated from where the drugs were at, a gun was separated from where everything is, it's kind of common for a lot of drug traffickers to keep things separate. Just in case you get robbed or burglarized in some, way, shape, or form, they may find one, but they don't get the other. So essentially you would have kind of a back-up safety aspect of it so you're not losing all of your items at one time. Commonly a firearm is kept close at hand where you sleep at, so that's why the firearm would have been in the bedroom. * * * The narcotics inside the kitchen being on top of the cabinet would tell me that they were placed up there kind of in a standard – like if you would walk into the kitchen, you never would have thought there was narcotics there. It would have looked more like those are sandwich bags or typical things that you would find in a kitchen. So they were placed there to look more commonplace than anything, possibly – almost looked like pots and pans may be stored on top of the cabinets. Without going up there and physically grabbing it, you wouldn't know what it is. So, again, a person that potentially could be coming in to burglarize the house wouldn't know to grab those things and look at it to see if that's where the drugs are at. So commonly drug traffickers separate all their different products or the fruits of drug trafficking, the common three items that are particularly with drug trafficking, guns, money, and drugs.

Tr. 348-350.

{¶23} The surrounding facts and circumstances constitute evidence from which the trier of fact can infer whether the defendant had constructive possession of the drugs. *State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶ 28 (10th Dist.). Although the mere presence of an individual in the vicinity of illegal drugs is insufficient to establish the element of possession, if the evidence demonstrates the individual was able to exercise dominion or control over the drugs, then he is deemed to be in possession of the drugs. *Id.* For instance, the Twelfth Appellate District has stated that even when drugs are hidden in a residence, “it may be inferred that the defendant was able to exercise dominion and control over the drugs when they are readily accessible” to him. *State v. Hooks*, 12th Dist. Warren No. CA2000-01-006, 2000 WL 1336630 (Sept. 18, 2000). In that case, the apartment where the drugs were found was leased by Hooks, he was seen by officers leaving the apartment after a controlled buy, and he was found in the apartment when the officers executed the search warrant. *Id.* Furthermore, when mail and credit cards are discovered in an apartment that is sufficient evidence to demonstrate the person is residing in the apartment and that he or she had control over the objects within the apartment. *State v. Dodson*, 10th Dist. Franklin No. 17AP-541, 2019-Ohio-2084, ¶ 19. Additionally, evidence of drugs in the common areas of a residence bolsters the inference that the owner or occupier is fully conscious there are drugs in his home. *State v. Tate*, 2018-Ohio-2765, 114 N.E.3d 411, ¶ 5 (7th Dist.), citing *State v. Hudson*, 2018-Ohio-133, 104 N.E.3d 25, ¶ 55 (11th Dist.) and *State v. Molina*, 8th Dist. Cuyahoga No. 83731, 2004-Ohio-4347, ¶ 27 (finding defendant was aware of drug trafficking based on the “casual and pervasive presence of heroin and tools of trafficking” in her apartment.)

{¶24} Given the evidence and the testimony, the state produced sufficient evidence Appellant, at least, constructively possessed the drugs. As stated above, possession can be joint or individual. The house was leased solely in Appellant’s name, his wallet containing his ID was found in the house, he was present when the search warrant was executed, and the drugs were found in the kitchen, a common area.

3. Trafficking – Evidence of More Than Mere Possession

{¶25} As stated above, R.C. 2925.03(A)(2) states a person shall not knowingly “[p]repare 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.”

{¶26} Appellant attempts to liken this case to our recent *Davis* decision. In *Davis*, we concluded the conviction for trafficking marijuana was based on insufficient evidence. *State v. Davis*, 7th Dist. Mahoning No. 16 MA 0078, 2018-Ohio-376. *Davis* had on his person 9 small, individually wrapped baggies of marijuana amounting to a total of 5.76 grams. The investigating officer testified that in his experience and professional opinion, multiple packages found on one person was an indication of drug trafficking. *Id.* at ¶ 4. However, that was the sole evidence of trafficking. Consequently, we held that since the state’s sole evidence was the manner of packaging and there was no other evidence of intent to sell, there was insufficient evidence of trafficking. *Id.* at ¶ 22. We additionally noted that the amount of marijuana was not analogous to other cases where a much higher amount was found and provided evidence of trafficking. *Id.* at ¶ 21-22 comparing *State v. Vanhorn*, 8th Dist. Cuyahoga No. 44655, 1983 WL 5899 (March 31, 1983) (*Vanhorn* had 17 grams of marijuana on his person as compared to the 5.76 grams *Davis* had).

{¶27} The case at hand is not analogous to *Davis*. Here, there was an abundance of evidence of trafficking. In addition to finding baggies that are commonly used to bag and resell the product, three scales (one with white residue on it), two sifters, and a face mask were found. Detective Sergeant Patton and Detective Sergeant Whited both explained that the items found are common for mid to upper level drug traffickers to possess. Tr. 259-266, 340-350. For instance, in discussing the face mask found, Detective Sergeant Patton explained:

Often times people who are involved in the illicit sale of narcotics that are breaking down larger amounts of narcotics into smaller amounts of narcotics don’t want to inhale the product, especially if you’re using heroin or cocaine or fentanyl because they can ingest the product and they can get high or they could have some adverse effects. So it’s a common practice from skilled people who are in the trade of trafficking in drugs to protect themselves, as well as using rubber gloves when they’re cutting the materials.

Tr. 262.

{¶28} As to the scales, he likewise explained:

Well, it just fell in line with what I said earlier. You know, you've got the larger scale. You have the plate and the sifters where an individual would have been mixing the two products. Then when they fell through onto the plate, scraping them up, and then weighing them out in smaller quantities. So in my experience the larger quantity – or the larger scale would have weighed the initial product that the individual who was doing this used to weigh up the product he had, and then the smaller scales for the product that he was going to sell.

Tr. 264-265.

{¶29} Detective Sergeant Whited also explained that these items are used by upper level drug dealers:

The sifters are predominantly used for mixing of narcotics, primarily for mixing of narcotics. So if we look at -- if I'm a heroin dealer and I take a certain amount of heroin, commonly I'd purchase heroin and then I'd buy some sort of cutting agent, and I would mix those two together. The primary reason for me to mix those two items together would be in order to increase my profits. So if I just bought an ounce of heroin and then broke an ounce of heroin down and sold it, I would make some money, but not a lot of money. If I combine it with some sort of cutting agent * * * you can combine it in with that heroin to make a larger amount. So I could almost take my ounce of heroin and make it into two ounces. In order to be sure I have a good mix, I would put it into a sifter and mix it several times in that sifter, because I don't want to have too much of one item versus the other item. Then my customers won't come back to me. * * * With the items that are in here, there's a larger digital scale, which commonly that larger digital scale your mid- to upper-level drug traffickers would have that size of scale to weigh larger amounts of a product.

Tr. 340-342.

{¶30} Also, a large amount of drugs was found in the house; there were 13.33 grams of fentanyl and 13.15 grams of heroin. Detective Sergeant Whited explained that this amount of heroin and fentanyl is indicative of someone who is trafficking drugs:

Yes. It's a larger amount. At the time of this back in 2016, like I said, fentanyl was becoming bigger. So a person to have two different types like that would be more of an upper level one to have the confidence to combine the two of them with a cutting agent in order to distribute it out for sales.

Tr. 347.

{¶31} Detective Sergeant Whited also indicated that when considering the bigger picture – where items were positioned, the drugs hidden in the kitchen, the firearm found within the sleeping quarters, and the large amount of money separate from the other items – the items found were indicative of a trafficker, i.e., an intent to sell or distribute. Tr. 348-350.

{¶32} Consequently, this case is not akin to *Davis*. Plastic bags, scales with white residue, a gun, a large quantity of cash, and a large quantity of drugs constitutes sufficient circumstantial evidence for drug trafficking. *State v. Carlton*, 9th Dist. Lorain No. 12CA010219, 2013-Ohio-2788, ¶ 10 (Constructive possession of the drugs, which were packaged for sale, together with possession of the scales containing cocaine residue is sufficient circumstantial evidence of trafficking.); *State v. Kutsar*, 8th Dist. Cuyahoga No. 89310, 2007-Ohio-6990, ¶ 19-20, citing *State v. Fain*, 5th Dist. Delaware No. 06CAA120094, 2007-Ohio-4854, ¶ 37-39 (Plastic sandwich bags and digital scales are circumstantial evidence for drug trafficking.); *State v. Fry*, 9th Dist. Summit No. 23211, 2007-Ohio-3240, ¶ 50 (presence of drugs and drug paraphernalia permit a reasonable inference that a person was preparing drugs for shipment). The state presented sufficient evidence of drug trafficking.

4. Conclusion

{¶33} All arguments presented under this assignment of error are meritless. The state presented sufficient evidence of drug trafficking and having a weapon while under disability.

Second Assignment of Error

“Appellant’s convictions were against the manifest weight of the evidence as the more persuasive evidence shows that Appellant was not in possession of the substances which he was purportedly trafficking and/or firearm found at his residence, and that he did not intend to sell the controlled substances.”

{¶34} Relying on his arguments set forth under the first assignment of error asserting there was insufficient evidence, Appellant contends the convictions are also against the manifest weight of the evidence. The state counters asserting the jury had substantial evidence before it and that evidence provided a rational basis to find that Appellant possessed and trafficked drugs, and possessed a weapon while under disability.

{¶35} Weight of the evidence concerns “the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.” *Thompkins*, 78 Ohio St.3d at 387. It depends on the effect of the evidence in inducing belief but is not a question of mathematics. *Id.*

{¶36} In addressing the argument that a conviction is against the manifest weight of the evidence, the appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins* at 387.

{¶37} However, in reviewing the record under a manifest weight of the evidence analysis, we are cognizant that “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The underlying rationale for giving deference to the trier of facts is that they are in the best position to view the witnesses, and observe their demeanor, gestures and voice inflections. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). We therefore generally proceed under the premise that when there are two fairly reasonable views of the

evidence or two conflicting versions of events, neither of which is unbelievable, we do not choose which one we believe is more credible. *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶38} The only issue regarding the having a weapon while under disability conviction is whether Appellant possessed the weapon. As explained under the first assignment of error, the weapon was found in the master bedroom where Appellant's wallet and ID were found. In a nightstand containing items typically belonging to a male, ammunition fitting that weapon was found. Ammunition found in the other nightstand in the bedroom that contained items typically belonging to a female did not fit that weapon. Therefore, considering the evidence, Appellant was in possession of the firearm and the jury did not create a manifest miscarriage of justice in finding him guilty of having a weapon while under disability.

{¶39} As for the trafficking convictions, the items typically associated with trafficking (drugs and mixing/preparing equipment, guns, and money) were found in various locations in the house. As aforementioned, the gun was found in the master bedroom where Appellant's wallet was found. The drugs, scales, sifter, face mask, and baggies were found on top of the kitchen cabinet. A large quantity of cash was found in the first floor bedroom.

{¶40} The officers' testimony indicated the items found and the manner in which they were found indicated, from their experience, that drug trafficking was occurring.

{¶41} Appellant's questioning of witnesses on cross examination insinuated that in addition to Appellant and his girlfriend living in the house, someone else may have been living in the first floor bedroom. This questioning was an attempt to impose reasonable doubt in the minds of jurors as to whether the drugs were Appellant's, i.e., whether Appellant possessed the drugs. However, during direct examination one officer testified that the first floor bedroom did not appear to be lived in and it appeared to be an extra storage area. Tr. 350-351.

{¶42} While Appellant's questioning may have raised another fairly reasonable view of the evidence that possibly the drugs belonged to someone else, the jury clearly did not believe Appellant's theory. As stated above, when there are two fairly reasonable views of the evidence, we will not choose which one we believe is more credible. *Gore*,

131 Ohio App.3d at 201. Furthermore, we note that case law indicates possession can be individual or joint. *Wolery*, 46 Ohio St.2d at 332. Therefore, while possibly there was another person who possessed drugs that does not mean Appellant did not also possess them.

{¶43} Considering all the evidence, we cannot find that the jury clearly lost its way when it convicted Appellant of drug trafficking. The evidence indicated Appellant possessed the drugs and that drug trafficking was occurring.

{¶44} For those reasons, this assignment of error lacks merit. The convictions are not against the manifest weight of the evidence.

Conclusion

{¶45} The first and second assignments of error lack merit. The convictions are affirmed.

Waite, P.J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.