

[Cite as *State v. Townsend*, 2019-Ohio-544.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107177

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT L. TOWNSEND

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-621045-B

BEFORE: Sheehan, J., Jones, P.J., and Keough, J.

RELEASED AND JOURNALIZED: February 14, 2019

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MICHELLE J. SHEEHAN, J.:

{¶1} Defendant-appellant Robert Townsend appeals from his conviction for trafficking and possessing criminal tools. For the reasons that follow, we affirm.

Procedural History and Substantive Facts

{¶2} On September 18, 2017, Townsend was charged with a codefendant in a six-count indictment as follows: Count 1 — drug trafficking in violation of R.C. 2925.03(A)(2); Count 2 — having weapons while under disability in violation of R.C. 2923.13(A)(3); Count 4 — improperly handling firearms in a motor vehicle in violation of R.C. 2923.16(B); Count 5 — carrying a concealed weapon in violation of R.C. 2923.12(A)(2); and Count 6 — possessing

criminal tools in violation of R.C. 2923.24(A).¹ The indictment stems from items discovered following a traffic stop.

{¶3} The case proceeded to a bench trial where the state presented the testimony of Bratenahl police officer Timothy Garris. Officer Garris was on routine traffic patrol when he observed a vehicle with “heavy tint” over the temporary license plate. He initiated the stop because he could not read the plate. He stated that the vehicle was “slow to stop.”

{¶4} Once the vehicle pulled over, Officer Garris approached from the passenger’s side of the car. He spoke with the driver and the passenger, asking for identification. According to the officer, Townsend, the passenger, reached into his pocket for identification, and when he took his hands out of his pocket, “he pulled out money and then a bunch of suspected marijuana.” He did not recall how much money Townsend had on him. The officer stated that he also observed an open bottle of liquor in the vehicle. At that point, Officer Garris asked Townsend to step out of the vehicle and speak with his partner, Officer Edwin Rodriguez.

{¶5} Officer Garris further testified that the driver consented to the officer searching his vehicle. Upon searching, Officer Garris discovered a backpack in the back seat that contained a Mason jar filled with marijuana, a couple of “baggies” of marijuana “that weren’t completely filled but * * * were dirty enough that they had marijuana in them,” additional plastic baggies, and a scale.² The backpack contained a total of 195.1 grams of marijuana that included baggies containing 44.4 grams of marijuana, 4.1 grams of marijuana, and approximately 6.1 grams of “loose suspected marijuana.”

¹Count 3 pertains only to Townsend’s codefendant, Donald King.

²Because Townsend was convicted of, and is only challenging his convictions for, trafficking and possessing criminal tools, we will not address the facts pertaining to the weapons discovered during the search of the vehicle.

{¶6} Officer Rodriguez testified that when he arrived on the scene, he heard Officer Garris instruct Townsend to proceed toward Officer Rodriguez at the back of the vehicle. At this point, Officer Rodriguez observed Townsend with “a bunch of items in his hands.” The officer stated that Townsend would not keep his hands where the officer could see them, so he handcuffed Townsend for the officers’ own safety and placed him into the patrol car. The officer then assisted with the search. After searching the vehicle, the officers called their supervisor, Sergeant Michael Flanagan, to the scene.

{¶7} Sergeant Flanagan previously served as a canine police officer who worked with a narcotics sniffing police dog. He testified that based on his training and experience, the amount of marijuana discovered in the search was “a large amount,” just under bulk, with an estimated street value of \$1,000. He also testified that the packaging material, i.e., the baggies, along with the digital scale containing marijuana residue, and the manner in which the marijuana was packaged, are indicative of drug trafficking. He noted specifically that small amounts of marijuana that are trafficked on the streets are sold in baggies.

{¶8} Officer Garris testified that Townsend was brought to the police station for booking. At this time, Townsend admitted the marijuana in the backpack was his, as he told the officer he “likes marijuana.”

{¶9} At the conclusion of the state’s evidence, the court granted defense counsel’s motion for a Crim.R. 29 dismissal on Counts 2, 4, and 5 (the weapons related charges). The court then found Townsend guilty on Counts 1 and 6 and sentenced him to two years community control sanctions.

{¶10} Townsend now appeals his convictions, asserting two assignments of error: his convictions are not supported by sufficient evidence and his convictions are against the manifest weight of the evidence.

Sufficiency of the Evidence

{¶11} In his first assignment of error, Townsend claims that the state failed to produce sufficient evidence to sustain the convictions. In support, he argues that the scale and the marijuana the police discovered were intended for his personal use and there was no evidence that he was trafficking, especially considering the small amount of marijuana discovered.

{¶12} When assessing a challenge to the sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "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." *Id.* Circumstantial and direct evidence "possess the same probative value." *Id.* at 272. A reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶13} Townsend was convicted of drug trafficking in violation of R.C. 2925.03(A)(2), which provides that no person "shall knowingly * * * [p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance * * * when the offender knows or has reasonable cause to believe that the controlled substance * * * is intended for sale or resale by the offender or another person."

{¶14} R.C. 2901.22(B) provides that “[a] person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature.” Further, “[a] person has knowledge of circumstances when the person is aware that such circumstances probably exist.” *Id.*

{¶15} Townsend was also convicted of possessing criminal tools in violation of R.C. 2923.24(A), which provides that “[n]o person shall possess or have under the person’s control any substance, device, instrument, or article, with purpose to use it criminally.” The criminal tools relevant in this case are the scale and packaging materials.

{¶16} Drug trafficking and possessing criminal tools may be proven by circumstantial evidence. *State v. Tate*, 8th Dist. Cuyahoga No. 102474, 2015-Ohio-4496, ¶ 27; *State v. Hawthorne*, 8th Dist. Cuyahoga No. 102689, 2016-Ohio-203, ¶ 23. And courts have consistently found that items such as plastic baggies, wrapping devices, digital scales, and large sums of money are often used in drug trafficking and may constitute circumstantial evidence of the conduct proscribed by R.C. 2925.03(A)(2). *Hawthorne* at ¶ 21, citing *State v. Bowling*, 8th Dist. Cuyahoga No. 93052, 2010-Ohio-3595, ¶ 60; *State v. Forte*, 8th Dist. Cuyahoga No. 99573, 2013-Ohio-5126, ¶ 10, quoting *State v. Rutledge*, 6th Dist. Lucas No. L-12-1043, 2013-Ohio-1482, ¶ 15 (collecting cases).

{¶17} Here, the police discovered almost 200 grams of marijuana, which the police testified was a large amount of marijuana, just under bulk. And according to Sergeant Flanagan, the marijuana had an estimated street value of \$1,000. This marijuana included three bags of marijuana that appeared to have been fuller at one time, a large Mason jar filled with marijuana, a digital scale with marijuana residue, and small plastic baggies. Townsend admitted the marijuana was his. Under these facts, we find a rational trier of fact, when viewing

the evidence in a light most favorable to the prosecution, could have found the elements of trafficking and criminal possession proven beyond a reasonable doubt. Sergeant Flanagan testified that these confiscated items were indicative of drug trafficking. In addition, there was no evidence the marijuana was intended for personal use. *See State v. Black*, 8th Dist. Cuyahoga No. 86193, 2006-Ohio-103 (finding sufficient evidence of drug trafficking where the officer testified the individually wrapped baggies of marijuana were indicative of trafficking and police did not recover any drug paraphernalia indicative of personal drug use).

{¶18} Townsend's first assignment of error is overruled.

Manifest Weight of the Evidence

{¶19} In his second assignment of error, Townsend contends that his convictions are against the manifest weight of the evidence. In support, he claims, once again, that there is no evidence he is a drug dealer. Specifically, he argues that there was not a large amount of cash discovered, which is typical of drug dealers.

{¶20} A manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, 78 Ohio St.3d at 390, 678 N.E.2d 541. Also, unlike a challenge to the sufficiency of the evidence, a manifest weight challenge raises a factual issue.

"The court, reviewing 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction."

Id. at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

A finding that a conviction was supported by the manifest weight of the evidence, however,

necessarily includes a finding of sufficiency. *State v. Howard*, 8th Dist. Cuyahoga No. 97695, 2012-Ohio-3459, ¶ 14, citing *Thompkins* at 388.

{¶21} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Although the reviewing court considers the credibility of witnesses in a challenge to the manifest weight of the evidence, it does so “with the caveat that the trier of fact is in the best position to determine a witness’ credibility through its observation of his or her demeanor, gestures, and voice inflections.” *State v. Campbell*, 8th Dist. Cuyahoga Nos. 100246 and 100247, 2014-Ohio-2181, ¶ 39. “‘Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility.’” *State v. Robinson*, 8th Dist. Cuyahoga No. 99290, 2013-Ohio-4375, ¶ 56, quoting *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 Ohio App. LEXIS 3709 (Aug. 22, 1997).

{¶22} Here, the evidence shows that the large amount of marijuana discovered in the vehicle belonged to Townsend. The police discovered the marijuana in a large Mason jar and three baggies. They also discovered additional plastic baggies and a digital scale containing marijuana residue. Sergeant Flanagan testified that small amounts of marijuana that are trafficked on the streets are sold in baggies. He further testified that these items discovered in the vehicle in which Townsend was riding were indicative of drug trafficking. It is within the factfinder’s province to find the officers’ testimony credible. And the fact that the police did not also recover a large amount of cash does not demonstrate that Townsend was not trafficking. *State v. Whitsett*, 8th Dist. Cuyahoga No. 101182, 2014-Ohio-4933, ¶ 30 (finding 17

individually wrapped smaller bags of marijuana and 3 larger bags on an accused's person sufficient evidence of drug trafficking even where there is no evidence of large sums of money or drug packaging material).

{¶23} We therefore find that this is not the exceptional case in which the evidence weighs heavily against the conviction.

{¶24} Townsend's second assignment of error is overruled.

{¶25} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MICHELLE J. SHEEHAN, JUDGE

LARRY A. JONES, SR., P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR
KEYWORDS: