[Cite as *State v. Owens*, 2011-Ohio-5888.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-401
v.	:	(C.P.C. No. 10CR-04-2541)
Jeffrey L. Owens,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 15, 2011

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Jeffrey L. Owens, from a judgment of sentence and conviction entered by the Franklin County Court of Common Pleas following a bench trial in which appellant was found guilty of possession of cocaine and tampering with evidence.

{¶2} On April 26, 2010, appellant was indicted on one count of possession of cocaine, in violation of R.C. 2925.11, and one count of tampering with evidence, in

violation of R.C. 2921.12. Appellant waived his right to a jury trial, and the matter proceeded to a bench trial on April 6, 2011.

{¶3} The first witness for the State was Columbus Police Officer Lamar Booker. On July 16, 2009, Officer Booker was assigned to the city's "Gang Initiative" (or "Summer Safety Strike Force"). (Tr. 9.) On that date, Officer Booker received information from patrol officers about certain activity at an address on Marina Drive. Officer Booker and three other officers, including Officer Ryan Steele and Officer John Narewski, were traveling southbound on Marina Drive in an unmarked vehicle when they observed five or six individuals in front of a house at 1685 Marina Drive. There were two vehicles in the driveway; one vehicle was parked near a garage, while the second vehicle, a black SUV, was parked in the driveway near the sidewalk. An individual was sitting in the front passenger seat of the SUV.

{¶4} As the officers drove by the SUV, the individual in the front passenger seat "looks over at us with a surprised look on his face." (Tr. 15.) According to Officer Booker, "it was almost like he was shocked to [see] police sitting right there." (Tr. 15.) At trial, Officer Booker identified appellant as the individual that was seated in the SUV on that date. Appellant immediately exited the vehicle and walked around toward the front of the SUV, "and as he's walking around he reaches down with both hands towards the front of his waist band, appeared to grab something, and then he positioned himself in front of the SUV and in between the other vehicle that's up parked up against the garage." (Tr. 16-17.) At that point, Officer Booker observed appellant "bend down slightly on the right side, with the right side of his body, and [he] appeared to throw something underneath the front of the SUV." (Tr. 17.)

{¶5} Officer Booker and another officer immediately exited their vehicle, and Officer Booker ordered appellant to stop. Appellant began running northbound through the yard, jumping over a chain link fence in the backyard, but the officers were able to apprehend him as he attempted to jump over a second fence.

{¶6} Columbus Police Officer Ryan Steele similarly testified that the officers, while driving on Marina Drive, observed an SUV parked in front of a residence with appellant seated in the front passenger seat. Appellant "turned around and saw us and had a look of shock when he saw us." (Tr. 38.) Appellant "immediately exited the vehicle," and he then "bent over" and "made a throwing motion with his right hand * * * towards underneath the vehicle." (Tr. 39.)

{¶7} Appellant "took off running northbound and then cut behind the house." (Tr. 40.) Officer Steele went to the front of the SUV, looked underneath and "saw a clear baggie with a white rock-like substance." (Tr. 44.) The officer, concerned about the fact there were approximately seven other individuals near the front of the house, stood in front of the SUV until two of the other officers returned with appellant.

{¶8} Columbus Police Officer John Narewski also testified about observing several individuals standing on the porch of a residence on Marina Drive. The officers observed an SUV parked in the driveway, with a male, later identified as appellant, sitting in the front passenger seat with the door open. Officer Narewski testified that appellant saw the officers approaching, and "[h]is eyes get real wide, kind of gets a panic look on his face." (Tr. 63.) Appellant immediately exited the SUV and ran to the front of the vehicle. Officers Narewski and Booker exited their vehicle, and Officer Narewski

observed appellant reach into his waistband with his right hand, pull out a clear plastic baggie, and toss it underneath the front of the SUV.

{¶9} Appellant then took off running, but the officers were able to apprehend him a short distance away. Officer Narewski returned to the SUV and looked underneath the front passenger wheel side, where he discovered a clear plastic baggie containing four smaller bags. The contraband was taken to the police property room, and subsequent testing revealed that the substance contained 16.34 grams of cocaine base.

{¶10} James Cross, age 30, testified on behalf of appellant. On July 16, 2009, Cross and some other individuals, including appellant, were hanging out at a residence on Marina Drive. Cross, appellant, and the others were seated in a mini-van near the residence. According to Cross, a car came around the corner with a red bandanna hanging from the antenna, and Cross believed there might be gang members inside the vehicle. Appellant and some of the individuals immediately jumped out of the mini-van, and Cross observed appellant run up alongside the house. Cross testified that he did not observe appellant throw anything after he exited the van.

{¶11} Appellant, age 23, testified on his own behalf. In July of 2009, appellant was residing at his grandmother's residence, located at 1722 Marina Drive. On July 16, 2009, appellant and his friend, Cross, walked over to a residence located at 1675 Marina Drive, where appellant was hoping to make a phone call. Appellant testified that one of the individuals at the residence, Gary Ziggler, was a member of the Brittany Hills Posse. Ziggler and several other people were drinking beer and smoking marijuana. Ziggler was sitting in the driver's seat of a gray Suburban truck, and two other individuals were seated in the back of the vehicle. Appellant and Cross got inside the vehicle. Appellant asked

the others for a beer, and he also "asked to hit the blunt, hit the marijuana a couple times." (Tr. 129.)

{¶12} Appellant testified that, earlier in the day, a vehicle had driven past him and someone had yelled: " 'You all better get from around here before we start shooting.' " (Tr. 129.) While he was sitting in the SUV on Marina Drive, appellant observed the same vehicle approach displaying a red rag. Appellant testified that he feared for his life, and that he began running because he "just had to get from out of there." (Tr. 130.) Appellant further explained that he "had a bag of marijuana. By the time they say 'Police,' I seen police but I knew I had an ounce of marijuana in my pocket." (Tr. 131.)

{¶13} Appellant was arrested, and one of the officers discovered the bag of marijuana in his right front pocket. Appellant testified he did not "know anything about no crack what they saying they seen me throw. Only thing I had was an ounce of marijuana. If I had crack I would have threw my marijuana." (Tr. 134.) On cross-examination, appellant testified he was scared because he had a prior misdemeanor charge, as well as the fact that, on the day of the incident, "that was the * * * largest amount of marijuana I have ever had on me." (Tr. 143.)

{¶14} Following the presentation of evidence, the trial court made a finding of guilt as to both counts. By entry filed April 7, 2011, the trial court sentenced appellant to two years incarceration for the possession of cocaine charge, and one year incarceration for the tampering with evidence charge. The court ordered the sentences on the two counts to run concurrently.

{¶15} On appeal, appellant sets forth the following assignment of error for this court's review:

APPELLANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶16} Under his single assignment of error, appellant asserts that his conviction for possession of cocaine is against the manifest weight of the evidence. Appellant argues that the testimony at trial depicts a chaotic scene where a great deal of activity occurred in a short amount of time. Appellant maintains that his rapid departure from the SUV was because he thought a gang was approaching. Appellant argues that, after he learned that the pursuers were actually police officers, he kept running because he had a bag of marijuana. Appellant contends that the greater amount of credible evidence supports acquittal for the charge of possession of cocaine.

{¶17} In *State v. Williams,* 10th Dist. No. 10AP-779, 2011-Ohio-4760, ¶20-21, this court discussed the manifest weight standard as follows:

> In considering a defendant's claim that a jury verdict is against the manifest weight of the evidence, "[t]he 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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Further, "[t]he 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.
>
> Unlike the standard of review for sufficiency of the evidence, "a reviewing court does not construe the evidence most strongly in favor of the prosecution when using a manifest-weight standard of review." *State v. Woullard*, 158 Ohio App.3d 31, 2004-Ohio-3395, ¶81. A manifest weight of the evidence challenge "questions the believability of the evidence and asks a reviewing court to determine which of the competing inferences is more believable." Id. However, an appellate court "may not substitute its judgment for that of the trier of fact on the issue of the credibility of the witnesses

> unless it is patently apparent that the factfinder lost its way." Id.

{¶18} R.C. 2925.11(A) states: "No person shall knowingly obtain, possess, or use a controlled substance." R.C. 2921.12(A)(1) provides in part that "[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall * * * [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation."

{¶19} In the present case, Officers Booker, Steele, and Narewski all testified that appellant exited the SUV, went to the front of the vehicle, and made a throwing motion. Officer Booker testified that appellant reached down with both hands toward the front of his waistband and appeared to grab something, bend down, and throw it underneath the front of the SUV. Officer Steele testified that appellant exited the vehicle, bent over, and made a throwing motion with his right hand toward the underneath of the SUV. Officer Steele went to the front of the SUV, looked underneath, and saw a clear baggie with a white substance. Officer Narewski testified that he observed appellant reach into his waistband with his right hand, pull out a clear plastic baggie, and toss it underneath the front of the SUV. Appellant took off running but was apprehended a short distance away. Officer Narewski looked underneath the SUV and found a clear plastic baggie whose contents later tested positive for crack cocaine.

{¶20} Following the presentation of the evidence, the trial court indicated that it found the officers' testimony believable, and the court also made clear that it "didn't * * * find [appellant's] testimony credible." (Tr. 156.) As to the testimony of appellant's friend,

Cross, the trial judge stated: "I don't believe Mr. Cross came in here and just outright lied. I just don't think he remembers everything that happened." (Tr. 151.)

{¶21} Upon review, the state presented sufficient competent, credible evidence that, if believed, supported appellant's conviction for possession of cocaine (as well as his conviction for tampering with evidence). While appellant presented evidence contrary to the state's version of events, it was within the province of the trier of fact to believe or disbelieve any witness, and to weigh the credibility of all of the witnesses. See *State v. Small*, 10th Dist. No. 06AP-1110, 2007-Ohio-6771, ¶20 ("Determinations of credibility and weight of the testimony remain within the province of the trier of fact"). Further, "[r]eversals of convictions as being against the manifest weight of the evidence are reserved for cases where the evidence weighs heavily in favor of the defendant. Id., citing *State v. Otten* (1986), 33 Ohio App.3d 339, 340. In the present case, the trier of fact, in resolving conflicts in the evidence, did not lose its way and create a manifest miscarriage of justice so as to require a new trial. Accordingly, the verdict is not against the manifest weight of the evidence.

{¶22} Based upon the foregoing, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
