[Cite as *State v. Rodriguez*, 2012-Ohio-281.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-362 (C.P.C. No. 10CR-07- 3888)
Ricardo R. Rodriguez,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 26, 2012

Ron O'Brien, Prosecuting Attorney, and *Daniel J. Stanley*, for appellee.

The Law Office of Jay G. Perez, LLC, and *Jay G. Perez*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Ricardo R. Rodriguez is appealing from his convictions on charges of possession of cocaine with specifications and tampering with evidence. He assigns four errors for our consideration:

> 1. APPELLANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED WHEN THE COURT REFUSED TO ALLOW HIM TO TERMINATE [H]IS DEFENSE COUNSEL AFTER A CONFLICT AROSE AND IN WHICH HE EXPRESSED DISSATISFACTION WITH HIS COUNSEL.

> 2. THE WEIGHT AND SUFFICIENCY OF THE EVIDENCE DOES NOT SUSTAIN A VERDICT OF GUILTY OF THE OFFENSE OF POSSESSION OF COCAINE WITH A FIREARM SECFICIATION IN VIOLATION OF OHIO REVISED CODE 2925.11, A FELONY IN THE FIRST DEGREE OR TAMPERING WITH EVIDENCE, IN VIOLATION OF OHIO REVISED CODE 2921.12, A FELONY IN THE THIRD DEGREE.
>
> 3. APPELLANT WAS DENIED A FAIR TRIAL DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL DURING HIS TRIAL.
>
> 4. APPELLANT WAS UNFAIRLY PREJUDICED BY A NUMBER OF IMPROPER COMMENTS AND MISSTATEMENTS OF EVIDENCE BY THE PROSECUTOR DURING CLOSING ARGUMENTS.

{¶2} In order to understand the context of this appeal, we address the second assignment of error first.

{¶3} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. Id. "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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781. The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a

matter of law, a judgment of acquittal must be entered for the defendant. See *Thompkins* at 387.

{¶4} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* at 387. In so doing, the court of appeals, sits as a " 'thirteenth juror' " and, after " '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.' " Id. (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175); see, also, *Columbus v. Henry* (1995), 105 Ohio App.3d 545, 547-48. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387.

{¶5} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [(1967), 10 Ohio St.2d 230], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. It was within the province of the jury to make the credibility decisions in this case. See *State v. Lakes* (1964), 120 Ohio App. 213, 217 ("It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.")

{¶6} See *State v. Harris* (1991), 73 Ohio App.3d 57, 63 (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶7} Turning to the facts and evidence, New Albany police began an investigation of the restaurant where Rodriguez worked in March 2010. An undercover police officer was assigned. The officer was able to make three purchases of cocaine for increasing prices of $10, $100 and $1,300 from a man who worked in the kitchen at the restaurant.

{¶8} Later, Javier Razo, who claimed to own the restaurant, told the officer he could provide up to five kilograms of cocaine. Razo preferred that the officer deal with another employee of the restaurant named Cristian Garcia.

{¶9} When the amount of cocaine being discussed got up to the five kilogram range, New Albany police assigned a second officer to the investigation. The second officer pretended to be the financial backer of the first undercover officer.

{¶10} A major buy of cocaine was initially set for June 8, 2010, but did not occur when Garcia's brother did not show up on time with the cocaine.

{¶11} A new date for a major cocaine sale was agreed upon, namely June 24, 2010. The two undercover officers were to meet with Garcia in a Meijer store parking lot on the far west side of Franklin County. Police surveillance teams were assigned to follow Garcia's movements as best they could.

{¶12} Garcia eventually drove to Westland Mall in Franklin County, where he was first met by the occupants of a Cadillac Escalade and a black truck. Rodriquez was in the black truck. He got into the Escalade.

{¶13} Garcia's vehicle and the Escalade left the parking lot of the mall and drove to an apartment complex, where they parked next to each other. Rodriguez was observed by police standing next to the drivers of the two vehicles before he went further into the complex alone. He returned soon thereafter with a white bag with long handles and a top which looked to be squared-off.

{¶14} The police officer conducting the surveillance in the apartment complex was temporarily distracted and did not see Rodriguez get into either one of the vehicles.

{¶15} The two vehicles left the apartment complex and drove to the Meijer store parking lot. Garcia then met with the two undercover officers. The officers asked to see the cocaine before parting with the money for the purchase. The Escalade was summoned over.

{¶16} The driver of the Escalade got out and showed the officers an Abercrombie and Fitch shopping bag containing two kilograms of cocaine. Rodriguez was in the passenger seat of the Escalade and did not speak.

{¶17} One of the undercover officers then gave a prearranged signal to tell other police officers to come and make the arrests.

{¶18} The occupants of the Escalade did not wait around to be arrested, but fled. The Escalade hit an undercover police vehicle and drove into a nearby subdivision.

When the vehicle was ultimately stopped, the driver and Rodriguez ran away on foot, but were soon apprehended.

{¶19} The shopping bag of cocaine was no longer in the Escalade, so police back-tracked on its route. The cocaine was soon found with the help of a man walking in the area. A search of the Escalade revealed an operable firearm in the center console next to where the driver and Rodriguez had been sitting.

{¶20} Rodriguez told police that he threw the shopping bag of cocaine out of the Escalade as he and the driver fled. Thus, by his own admission, he exercised control over the cocaine, or possessed it, even if only briefly. His guilt for possession of cocaine with a specification that the amount of cocaine was one kilogram or more is not in serious dispute. Likewise, trying to dispose of the cocaine under these circumstances makes Rodriguez guilty of tampering with evidence.

{¶21} The jury which heard the trial of this case found Rodriguez not guilty of carrying a concealed weapon and not guilty of improper handling of a firearm in a motor vehicle. At the same time, the jury found that Rodriguez had a firearm on or about his person or under his control. Apparently, the jury's view was that the firearm next to Rodriguez in the center console of the Escalade was "on or about his person" for purposes of a firearm specification. This was a reasonable finding under the facts presented. No culpable mental state is required.

{¶22} The evidence clearly supported the jury's careful consideration of Rodriguez's guilt or innocence and the verdicts the jury rendered. The verdicts were

supported by sufficient evidence and were not against the manifest weight of the evidence.

{¶23} The second assignment of error is overruled.

{¶24} The first and third assignments of error address issues related to the effective assistance of counsel. We will address them jointly.

{¶25} The central case involving the Sixth Amendment to the United States Constitution is *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. *Strickland* does not require that a defendant like his or her lawyer, only that they be able to communicate to the point that defense counsel can fairly represent the accused. Sometimes a defense counsel has to communicate very bad news to his or her client. Bad news, such as the strong likelihood that the jury is going to find the defendant guilty and the judge is going to send the defendant to prison for several years, is frequently not well received.

{¶26} Rodriguez's complaints expressed pre-trial were little more than that. Rodriguez did not like what his lawyer was telling him. Given the overwhelming evidence, the lawyer could not honestly do his job without conveying the bad news.

{¶27} Also given the evidence, the results of the trial were guilty verdicts as to the fewest number of charges imaginable. Nothing about the jury verdicts in the least suggests that counsel was ineffective. Rodriguez received an extremely fair trial, due in no small part to his counsel's efforts.

{¶28} The first and third assignments of error are overruled.

{¶29} The jury verdicts also strongly imply that Rodriguez was not prejudiced by anything the prosecuting attorney's office said during closing arguments.

{¶30} The evidence clearly showed that Rodriguez helped convey two kilograms of cocaine to the location where it was to be sold. The evidence clearly showed that Rodriguez was involved in the flight from the proposed sale and admitted throwing the cocaine from the fleeing vehicle. The evidence clearly showed that there was an operable firearm in the console right next to Rodriguez. Rodriguez was not prejudiced by the State of Ohio's closing argument, which, at most, submitted reasonable inferences from the evidence presented for the jury's consideration.

{¶31} The fourth assignment of error is overruled.

{¶32} All four assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.

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