

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2012-T-0005
DREW L. REID,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2010 CR 00291.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Drew L. Reid, appeals his convictions for Trafficking in Heroin and Insurance Fraud following a jury trial in the Trumbull County Court of Common Pleas. Reid was sentenced to an aggregate prison term of two-and-a-half years. The issues before this court are whether the convictions are supported by sufficient evidence and/or against the manifest weight of the evidence, where the only eyewitness to the drug transaction denied Reid's involvement and where the

investigation of insurance fraud was triggered by a delay in filing the claim. For the following reasons, we affirm Reid's convictions.

{¶2} On May 4, 2010, the Trumbull County Grand Jury indicted Reid on two counts of fifth-degree Trafficking in Heroin, felonies of the second degree in violation of R.C. 2925.03(A)(1) and (A)(2). The second count contained a forfeiture specification with respect to certain firearms.

{¶3} On February 14, 2011, Reid was additionally indicted for Insurance Fraud, a felony of the fourth degree in violation of R.C. 2913.47(B)(1).

{¶4} Reid entered pleas of "not guilty" to the charges.

{¶5} On November 7, 2011, the parties stipulated that Reid would submit to a polygraph test and that the results would be admissible at trial.

{¶6} On November 29 and 30, 2011, Reid's case was tried before a jury. The following testimony was offered at trial.

{¶7} Richard L. Tackett, a detective with the Trumbull County Sheriff's Department and investigator with the Trumbull-Ashtabula Group ("TAG") Law Enforcement Task Force, testified that he was advised that heroin was being sold out of a house at 1633 Jefferson Street, in Warren, Ohio. Tackett arranged for a confidential informant, Mark Tricker, to make a controlled buy at the residence. In Tackett's presence, Tricker made a phone call to arrange the buy. Tricker said that he arranged the buy with Reid, but that Reid would not be at home to make the actual sale. Tackett gave Tricker \$50, with which he purchased five bindles of heroin from a man named Jay Kurey. Tackett testified that he had used Tricker on five prior occasions and paid him \$50 for making the controlled buy at 1633 Jefferson Street.

{¶8} Detective Tackett testified that, on November 25, 2009, he conducted a search of the residence at 1633 Jefferson Street. In the living room, officers found various crack pipes and other drug paraphernalia, needles, and a shotgun. In an upstairs bedroom, officers found more crack pipes, over 30 syringes, digital scales, police scanners, a plate with razor blades and other drug paraphernalia, a second shotgun, unopened boxes of tracphones, seven bindles of heroin, lottery tickets, and Reid's wallet. Tackett testified that it was a common practice to use lottery tickets to bindle heroin, razor blades are used to process heroin for sale, and tracphones are often exchanged for heroin.

{¶9} Detective Tackett testified that prior to executing the search, he made a video recording of the residence and the surrounding property, which was shown to the jury. Tackett explained that a search of a drug house includes a search for items subject to forfeiture, such as jewelry or TVs and, in particular, safes which commonly contain the proceeds of drug sales ("we always either take the safe or try to open it right at the residence").

{¶10} Detective Tackett testified that he "thoroughly" searched the residence, but found "very little" of value and only seized the two shotguns. Tackett said there were a couple of tube TVs, which have "no value these days," but no jewelry, expensive clothing, or electronics (cameras, laptops, gaming systems, etc.). Specifically, Tackett testified that there were no flat-screen or plasma TVs at the residence.

{¶11} Jeffrey Houser, a forensic scientist with the Ohio Bureau of Criminal Identification and Investigation, testified that the five bindles purchased in the controlled buy contained a total of .1 gram of heroin.

{¶12} H. Jennifer Arcurio, of the Ohio Bureau of Criminal Identification and Investigation, testified that the seven bindles recovered from 1633 Jefferson Street contained .1 grams of heroin.

{¶13} William D. Evans II, a polygraphist and owner of Poly-Tech Associates, Inc., testified as to the results of a polygraph test performed on Reid on November 9, 2011. In the course of the testing, the following relevant questions were asked of Reid: “1. With Jay Kurey by phone, did you approve the sale of heroin to Tricker?” Reid responded, “no.” “2. Within the last 2 years, did you participate in any drug sales out of your house on Jefferson?” Reid responded, “no.” “3. As a result of that burglary, did you claim any items to be stolen, that really were not?” Reid responded, “no.” “4. As a result of this burglary, were three big screens actually stolen, from your Jefferson home?” Reid responded, “yes.” Evans concluded that Reid’s responses to all these questions were “deceptive.”

{¶14} Evans testified that there were difficulties in performing the test on Reid, because Reid would give inconsistent answers, offer explanations for his answers, and did not always abide by the test rules. Despite the difficulties, Evans maintained that the results of the test were reliable: “Despite the starting and stopping and the explanations and the narrative answers and the incorrect statements or answers during the test, those tests were aborted until I got, until I was able to obtain three conclusive and nondistorted tests that were capable of being evaluated.”

{¶15} William Anderson, an insurance agent for State Farm Fire and Casualty Company, testified that, in 2008, he sold Reid a \$50,000 renter’s insurance policy. Anderson explains that a basic policy has “caps” limiting the amount of coverage for certain items. For example, there was a \$1,000 cap on coverage for “Jewelry and furs,”

a \$2,500 cap on coverage for “Firearms,” and a \$5,000 cap on coverage for “Home Computer.” Anderson testified that he explained these coverage limitations to Reid, who declined to purchase supplemental coverage for such items.

{¶16} Charles (Chuck) Handy, a claims representative for State Farm, testified that he was assigned to handle a theft claim under Reid’s policy. Attached to Reid’s Sworn Statement in Proof of Loss, there was an itemized inventory of allegedly stolen property. Reid’s inventory claimed a total of approximately \$71,927 of stolen items. Included in the inventory were jewelry (such as watches, rings, chains, earrings, and a gold ingot) in excess of \$40,000; a safe; two microwave ovens; leather and mink coats; a basketball signed by LeBron James; iPods; gaming systems; digital cameras and recorders; three plasma televisions with an aggregate value of \$3,400; a lawnmower and other tools; two desktop computers and a laptop; \$2,500 of fishing gear; \$6,000 of DVD movies; and other items.

{¶17} Handy testified that the theft was reported to the police on December 1, 2009, and that State Farm was notified on December 8, 2009. Reid claimed the theft, or thefts, occurred between November 23 and 30, 2009, while he was in jail following the search of the residence. Reid claimed to have caught one of the burglars in a downstairs bedroom, but he escaped through a window.

{¶18} Handy inspected and photographed the premises, noting that there was damage to one window of the home indicating forced entry.

{¶19} Handy testified that Reid was unable to produce any receipts for the items claimed as stolen. Reid did produce a number of owner’s and operator’s manuals for products, but these manuals did not match the items reported in the inventory. Handy testified that Reid reported an income of \$675 a month from disability, and claimed to

have won “large sums” of money by gambling. Handy decided to deny Reid’s claim based on material misrepresentations in the Proof of Loss and submitted the results of his investigation to the National Insurance Claim Bureau, as required by law.

{¶20} Angel M. Bowers, a fraud investigator with the Ohio Department of Insurance (Fraud Division), investigated Reid’s insurance claim and referred the matter to the Trumbull County Prosecutor. Bowers testified that she was unable to identify items listed on the inventory in the video recording made by Detective Tackett prior to the search of the residence on November 25, 2009. Bowers testified that Reid provided pictures of himself wearing jewelry, but that the jewelry did not match the items in the inventory. Bowers also confirmed that the product manuals provided by Reid did not match the items contained in the inventory.

{¶21} Mark Tricker testified that, working as an informant for Detective Tackett, he made a controlled buy of heroin from Jay Kurey at 1633 Jefferson Street. Tricker denied arranging to buy the heroin with Reid, although he had indicated otherwise to Detective Tackett. Tricker testified that Reid had no involvement at all with the sale of heroin. At this point, Tricker was declared a hostile witness and the State was allowed to continue questioning him as if on cross-examination.

{¶22} Tricker testified that within a day of his name being released as a confidential informant, he received an anonymous call identifying him with the police and advising him “to think [his] situation over.” Tricker admitted that the phone call had put him in fear for his safety and was the reason for changing his testimony.

{¶23} Tricker testified that when he made the buy he could see a large flat-screen TV inside the Jefferson Street residence. Tricker denied ever having worked for Detective Tackett as a confidential informant prior to the present occasion. Tricker

admitted that he previously told Detective Tackett that he had observed drugs throughout Reid's residence and that Reid had offered to pay him with narcotics for removing a tree from his property. Tricker testified that these prior statements were false.

{¶24} David Reid is defendant, Drew Reid's, brother and testified that he was living at 1633 Jefferson Street on November 25, 2009, when the search warrant was executed. David testified that his brother owned an abundance of televisions, jewelry, fishing equipment, and fine clothing. David testified that there were no drugs or firearms present when the police searched the house. David disputed the veracity of photographs showing the presence of drugs and shotguns, claiming that the photographs were taken during a prior search of the residence. David testified that the digital scales were used "to mix up stuff for the dogs" and that everyone in the neighborhood had police scanners "to keep track of the police." Finally, David testified that the police confiscated valuables from the residence on a prior occasion.

{¶25} David testified that Jay Kurey also lived at 1633 Jefferson Street and that he might have sold drugs.

{¶26} Drew Reid testified that he did not sell drugs to Tricker or have any sort of business dealings with him. Reid testified that Tricker was Kurey's friend and that they both did drugs.

{¶27} Reid testified that he was ordered out of the house before the police searched it and that the police used this opportunity to plant his wallet and the drugs in the house and implicate him in drug trafficking. Reid testified that the police altered the location of other items in the home, such as the shotguns. Reid claimed the shotguns were kept in a cubbyhole with a safe containing his valuables.

{¶28} Reid testified that after he made bail, he returned home and found four people in the house. Reid locked one of the persons in a downstairs bedroom, but he was able to escape through a window.

{¶29} Reid testified that he truthfully reported the items stolen in the Proof of Loss. Reid claimed he was able to purchase these items with money he won gambling and playing the lottery. Reid argued that the State trumped up the fraud charges because its drug case was weak.

{¶30} On December 1, 2011, the jury returned its verdict, finding Reid guilty of all charges.

{¶31} On January 3, 2012, the trial court journalized its Entry on Sentence. The court sentenced Reid to twelve months in prison on each count of Trafficking in Heroin and eighteen months in prison for Insurance Fraud. The Trafficking sentences were to be served concurrently with each other and consecutively to the Fraud sentence, for an aggregate prison term of two-and-a-half years.

{¶32} On January 16, 2012, counsel for Reid filed a Notice of Appeal.

{¶33} On appeal, Reid raises the following assignments of error:

{¶34} “[1.] The appellant’s convictions are not supported by sufficient evidence.”

{¶35} “[2.] The appellant’s convictions are against the manifest weight of the evidence.”

{¶36} The manifest weight of the evidence and the sufficiency of the evidence are distinct legal concepts. *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 44. With respect to the sufficiency of the evidence, “[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. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶37} Whereas “sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, * * * weight of the evidence addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). “In other words, a reviewing court asks whose evidence is more persuasive -- the state’s or the defendant’s?” *Id.* An appellate court considering whether a verdict is against the manifest weight of the evidence must consider all the evidence in the record, the reasonable inferences, the credibility of the witnesses, and 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.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶38} “Since there must be sufficient evidence to take a case to the jury, it follows that ‘a finding that a conviction is supported by the *weight* of the evidence necessarily must include a finding of sufficiency.’” (Emphasis sic.) *Willoughby v. Wutchiett*, 11th Dist. No. 2002-L-165, 2004-Ohio-1177, ¶ 8, quoting *State v. Roberts*, 9th Dist. No. 96CA006462, 1997 Ohio App. LEXIS 4255, *5 (Sept. 17, 1997); *Thompkins* at 388 (“[a] reversal based on the weight of the evidence * * * can occur only after the State both has presented *sufficient evidence* to support conviction and has persuaded the jury to convict”) (emphasis sic), quoting *Tibbs v. Florida*, 457 U.S. 31, 42-43, 102 S.Ct. 2211, 72 L. Ed.2d 652 (1982).

{¶39} In order to convict Reid of Trafficking in Heroin, the State had to prove, beyond a reasonable doubt, that he “knowingly” did “[s]ell or offer to sell a controlled substance” and “[p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, * * * know[ing] or ha[ving] reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.” R.C. 2925.03(A)(1) and (2).

{¶40} Reid argues there was no evidence linking him with the sale of drugs except for the results of the polygraph test which indicated that Reid was being “deceptive” when he denied his involvement in the drug transactions. We disagree.

{¶41} The most obvious connection between Reid and the sale of heroin is the fact that he rented the house at 1633 Jefferson Street, where the sale of heroin to Tricker occurred and where the police recovered heroin packaged for sale. The testimony of all the witnesses agreed that Reid rented the premises at 1633 Jefferson Street and that his brother, Kurey, and whoever else stayed there, did so at Reid’s pleasure. In Reid’s bedroom were found: seven bindles of heroin, a shotgun, police scanners, digital scales, and plates with razors - all items strongly suggestive of Reid’s involvement in trafficking heroin. Reid’s denial of any involvement was properly impeached by the results of the polygraph tests. Tricker’s denial of Reid’s involvement was properly impeached by his prior inconsistent statements and his admission that he changed his testimony because of an intimidating phone call.

{¶42} We further note that the trial court instructed the jury on Complicity, i.e., that Reid could be found guilty for aiding and abetting Kurey in the trafficking of heroin. The evidence presented at trial likewise supports Reid’s convictions as an aider and abettor. *State v. Kidd*, 11th Dist. No. 2006-L-193, 2007-Ohio-4113, ¶ 54 (“[i]f, for the

sake of argument, Kidd's role in these activities was nothing more than allowing them to occur in the apartment, she could be found guilty of complicity") (cases cited); *State v. Scott*, 5th Dist. No. 06 CA 1, 2007-Ohio-303, ¶ 36-42 (complicity convictions supported by sufficient evidence where drug buys occurred at Scott's residence and drugs, paraphernalia, and firearms were found in her bedroom).

{¶43} With respect to the Trafficking, Reid's convictions were supported by sufficient evidence and there was nothing unreasonable in the jury's resolution of the conflicts in the evidence.

{¶44} In order to convict Reid of Insurance Fraud, the State had to prove, beyond a reasonable doubt, that he, "with purpose to defraud," did "[p]resent to * * * an insurer any written or oral statement that is part of * * * a claim for payment pursuant to a policy, * * * knowing that the statement, or any part of the statement, is false or deceptive." R.C. 2913.47(B)(1). Additionally, the State had to prove that the amount of the claim was more than seven thousand five hundred dollars. R.C. 2913.47(C).

{¶45} Reid argues the evidence was insufficient to convict him of Insurance Fraud because "no witness came out and said with any specificity whatsoever which parts of the Appellant's claim were fraudulent," or "even one item that the Appellant laid claim to and which anyone could prove * * * was not in the residence at the time period in question." We disagree.

{¶46} Detective Tackett testified that he performed an extensive search of the residence at 1633 Jefferson Street and did not recall seeing any of the items Reid claimed were subsequently stolen. This testimony was corroborated by the video made of the premises prior to the search being conducted, Reid's failure to produce any receipts, operator's manuals and/or photographs of the allegedly stolen items, and the

results of the polygraph test. Accordingly, Tackett's testimony is sufficient evidence that the Proof of Loss submitted by Reid contained false or deceptive statements.

{¶47} Particularly damaging to Reid's position is his lack of credibility. At trial, Reid testified that he acquired a basketball signed by LeBron James from one of his best friends, Marty Stigpen, who owned a shop in Girard. Reid explained that Stigpen was "bad on [his] luck" and brought the ball to him in person and to offer it for sale. On the Proof of Loss, Reid reported that he purchased the ball on eBay.

{¶48} Reid testified that many of his valuables, including the receipts for their purchase, were kept in a safe in a cubbyhole in his bedroom, along with two shotguns. Reid also testified that the police removed the shotguns during the search and repositioned them in the residence. If Reid was telling the truth, the jury would have to conclude that the police failed to find the safe or found the safe, but declined to seize it. It is just as probable that Reid was lying as it is that the police failed to see the safe or declined to seize it. Detective Tackett testified that safes are "always" seized, consistent with David Reid's testimony regarding police seizure of valuables.

{¶49} Reid reported two microwave ovens being stolen. When Handy was investigating Reid's claim, he photographed a microwave oven in the kitchen, which Reid claimed to have borrowed "from my people" after the alleged robbery. Yet, the same microwave in the same position in the kitchen is visible in the video of the residence made by Detective Tackett prior to the robbery. When confronted with this contradiction, Reid explained "when they made one, you understand, they didn't make but one microwave of the same kind," and "dang."

{¶50} Finally, Reid claims that it should not be "surprising that a 59 year old man could accumulate property with a retail value of over \$70,000 in his lifetime." The Proof

of Loss, however, indicates that almost all of the items listed were acquired in the past five years.

{¶51} Reid's conviction for Insurance Fraud was supported by sufficient evidence and there was nothing unreasonable in the jury's resolution of the conflicts in the evidence.

{¶52} The two assignments of error are without merit.

{¶53} For the foregoing reasons, Reid's convictions for Trafficking in Heroin and Insurance Fraud in the Trumbull County Court of Common Pleas are affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.