

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-08-018
	:	
- vs -	:	<u>OPINION</u>
	:	5/11/2015
	:	
ANTONIO M. CROCKETT,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS  
Case No. 13 CRI 00289

Jess C. Weade, Fayette County Prosecuting Attorney, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

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**PIPER, P.J.**

{¶ 1} Defendant-appellant, Antonio Crockett, appeals his convictions and sentence in the Fayette County Court of Common Pleas for trafficking in cocaine, trafficking in heroin, and having weapons under disability.

{¶ 2} Gene Ivers, the Chief Probation Officer for the Washington Court House Municipal Court, performed a residence search of one of his probationers, Terri Ruth. Ivers

was accompanied by a Fayette County deputy during the search. Ruth, who rented the apartment in which she and her daughter lived, was subject to residence searches as a term of her probation. When Ivers arrived to search Ruth's residence, Ruth, Ruth's daughter, Crockett, and another man were located in the apartment.

{¶ 3} Ivers discovered marijuana on Ruth's dresser in her bedroom, as well as a white powdery substance, plastic wrap and baggies, a locked safe, a key, digital scales, lighters, a burnt spoon, and small baggies of a white product. Inside the safe, Ivers found a gun, cash, and more drugs. Upon finding these items, Ivers and the deputy contacted the Sheriff's Office for aid in completing the search.

{¶ 4} Lieutenant Ryan McFarland of the Fayette County Sheriff's Office responded to Ruth's residence. There, he seized the safe, gun, drugs, and money, and sent the items to the Ohio Bureau of Criminal Investigation for testing. The items in the baggies tested positive for cocaine and heroin, and the other drugs were identified as oxycodone, dihydrocodeine, and alprazolam.

{¶ 5} Later, during a recorded phone call originating from the Fayette County Jail, Crockett and an unnamed woman were heard conversing about the possible charges against him. The woman indicated that the police were taking the gun and dusting it for fingerprints in order to determine who the gun belonged to. At that point, Crockett is heard stating, "I wiped that down. I got nothing to do with that."

{¶ 6} Crockett was charged with multiple counts of trafficking in cocaine, possession of cocaine, trafficking in heroin, possession of heroin, aggravated trafficking in drugs, possession of controlled substances, and having weapons under disability. The matter proceeded to a jury trial after Crockett pled not guilty to all of the charges.

{¶ 7} During trial, Crockett stipulated to his prior conviction of a drug-related offense, and the trial court admitted a redacted copy of Crockett's judgment entry of conviction to

show that he was under a disability and not permitted to possess a gun. The jury also heard a redacted version of the phone call between Crockett and the unnamed woman in which Crockett is heard discussing his claim that he wiped down the gun. Crockett did not testify, nor did he present any witnesses in his defense.

{¶ 8} The jury found Crockett guilty of trafficking in, and possession of, the cocaine and heroin found in the safe, as well as having weapons under disability. However, the jury found Crockett not guilty of the other charges specific to the drugs located outside of the safe that Ivers found in different locations throughout Ruth's bedroom.

{¶ 9} The trial court merged the possession charges into the trafficking charges, and sentenced Crockett to an aggregate sentence of nine years on the two trafficking charges and having weapons under disability. Crockett now appeals his convictions and sentence, raising the following assignments of error. For ease of discussion, and when applicable, we will combine Crockett's assignments of error when the issues are interrelated.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE JURY'S VERDICTS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 12} Assignment of Error No. 3:

{¶ 13} THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE CONVICTIONS.

{¶ 14} Assignment of Error No. 4:

{¶ 15} THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29.

{¶ 16} Crockett argues in this first, third, and fourth assignments of error that his convictions are against the manifest weight of the evidence and are not supported by sufficient evidence so that the trial court should have granted his Crim.R. 29 motion.

{¶ 17} Crim.R. 29(A) permits a trial court, upon motion, to enter a judgment of acquittal. *State v. Dougherty*, 12th Dist. Preble No. CA2013-12-014, 2014-Ohio-4760, ¶ 17. An appellate court reviews a trial court's decision on a motion for acquittal using the same standard as that used to review a claim challenging the sufficiency of evidence. *State v. Clements*, 12th Dist. Butler No. CA2009-11-277, 2010-Ohio-4801, ¶ 17.

{¶ 18} When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, 12th Dist. Warren No. CA2006-01-007, 2007-Ohio-2298. "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*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, superseded on other grounds.

{¶ 19} A manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other. *Wilson*, 2007-Ohio-2298.

In determining whether a conviction is against the manifest weight of the evidence, 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 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. Cummings*, 12th Dist. Butler No. CA2006-09-224, 2007-Ohio-4970, ¶ 12.

{¶ 20} While appellate review includes the responsibility to consider the credibility of witnesses and the weight given to the evidence, "these issues are primarily matters for the trier of fact to decide since the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given the evidence." *State v. Walker*, 12th Dist. Butler No. CA2006-04-085, 2007-Ohio-911, ¶ 26. Therefore, an appellate court will overturn a

conviction due to the manifest weight of the evidence only in extraordinary circumstances to correct a manifest miscarriage of justice, and only when the evidence presented at trial weighs heavily in favor of acquittal. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

{¶ 21} When offering proof, both circumstantial and direct evidence have the same probative value, and in some instances, certain facts can be established only by circumstantial evidence. *State v. Crutchfield*, 12th Dist. Warren No. CA2005-11-121, 2006-Ohio-6549, ¶ 20. Circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, ¶ 75. A conviction based on purely circumstantial evidence is no less sound than a conviction based on direct evidence. *State v. Shannon*, 191 Ohio App.3d 8, 2010-Ohio-6079, ¶ 10 (12th Dist.).

{¶ 22} Crockett was convicted of trafficking in cocaine and heroin in violation of R.C. 2925.03(A)(2), which provides that no person shall knowingly "prepare 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."

{¶ 23} Crockett was also convicted of possession of cocaine and heroin in violation of R.C. 2925.11(A), which provides that no person shall knowingly "obtain, possess, or use a controlled substance or a controlled substance analog."

{¶ 24} Crockett was also convicted of having weapons while under disability in violation of R.C. 2923.13(A)(3), which provides, "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply: The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse \* \* \*."

{¶ 25} After reviewing the record, we find that Crockett's convictions were supported by sufficient evidence, were not rendered against the manifest weight of the evidence, and that the trial court did not err in denying Crockett's Crim.R. 29 motion. The state presented evidence that Crockett possessed, and was preparing for sale, heroin and cocaine, and that he possessed a gun after having been convicted of a prior drug offense.

{¶ 26} Ivers testified that he was Ruth's probation officer, and that as a term of her probation, he was permitted to search Ruth's home. Ivers testified that when he arrived to conduct the search, Ruth and her daughter were in the home, along with Crockett and another man. Ivers estimated that the apartment was approximately 500 square feet, and that during the search, he found multiple drugs and drug paraphernalia, including digital scales, lighters, and a burnt spoon. Ivers also located a pill counter and several pill containers.

{¶ 27} Ivers also testified that during the search, he discovered a safe under the bed as well as the key to the safe in a cup near the bed. When opened, Ivers discovered more drugs, cash, and a gun. Ivers then contacted Lieutenant McFarland, who proceeded to investigate by processing the drugs, paraphernalia, and gun.

{¶ 28} Lieutenant McFarland testified that he is a detective with the Fayette County Sheriff's Office, and that based upon his training and experience, he is familiar with the preparation of drugs for distribution and sale. Lieutenant McFarland testified that when he encountered the drugs in the bedroom and safe, he observed a "large amount" of cocaine and heroin, as well as digital scales used to measure the drugs, and baggies used to separate the drugs for sale. Lieutenant McFarland also seized \$1,494.70 in cash from the safe, as well as the gun.

{¶ 29} The state then played a redacted version of a phone call between Crockett and an unnamed female. The call was placed from the jail, and was intercepted and recorded by

the sheriff's office. The jury received a transcript of the redacted phone call, and Crockett stipulated that it was his voice heard on the phone call and that the transcript was accurate.

In full, the transcript states,

[Female] Right. That's what he said-we might as well wait on that, you know and um, I don't know-he-he-said they'll dust the gun to see whose it is and...

[Crockett] I wiped that down. I got nothing to do with that.

[Female] Don't talk on this phone.

{¶ 30} When viewed in a light most favorable to the prosecution, the evidence supports Crockett's convictions for trafficking in and possession of heroin and cocaine. The fact that the gun was located in the safe with large amounts of cocaine, heroin, and cash indicates that Crockett, who admitted to wiping down the gun, had knowledge of the items used in the trafficking of drugs. The evidence indicates that Crockett knew that the drugs were being processed for sale, as indicated by the presence of paraphernalia required to sell the drugs, including digital scales, baggies, and pill counters, along with the cash and gun.

{¶ 31} The evidence also supports Crockett's conviction for having a weapon under disability. Crockett stipulated to his prior conviction for aggravated possession of drugs, so that he was not permitted to possess a gun. Given his statement that he wiped down the gun found in the safe, the jury was free to infer that Crockett possessed the gun.

{¶ 32} Crockett argues that the state failed to prove his participation in trafficking or his possession of the gun because there were never fingerprints recovered from the gun, safe, or drugs. However, and based upon Crockett's statement during the phone call that he wiped down the gun, it was reasonable to infer that no fingerprints would be found. Crockett also argues that his statement regarding wiping down the gun was taken out of context. However, the portion of the phone call used during trial clearly indicates that Crockett and the female were discussing the gun seized from Ruth's apartment. Crockett gave no indication

that he was discussing some other gun when he spoke with the unnamed female. It readily appears the gun the female was discussing was being processed for evidence, and it is the same gun about which Crockett made his response.

{¶ 33} The jury's verdict indicates that it considered and weighed the evidence carefully. The jury found Crockett guilty only of the trafficking and possession charges related to the heroin and cocaine found in the safe with the gun. The jury, however, acquitted Crockett of the other charges specific to the drugs found in Ruth's bedroom that were not found alongside the gun in the safe. The jury's verdict, therefore, indicates that it considered the fact that heroin and cocaine were directly linked to the gun, and that Crockett's knowledge of the gun also indicated his knowledge of the large amounts of cocaine and heroin found with the gun.

{¶ 34} After viewing the evidence in a light most favorable to the prosecution, the jury could have found the essential elements of trafficking, possession, and having weapons under disability proven beyond a reasonable doubt. As such, Crockett's convictions are supported by sufficient evidence. Additionally, the convictions were not against the manifest weight where the jury did not clearly lose its way or create such a manifest miscarriage of justice that the convictions must be reversed and a new trial ordered. Having found that Crockett's convictions are supported by sufficient evidence and were not rendered against the manifest weight of the evidence, Crockett's first, third, and fourth assignments of error are overruled.

{¶ 35} Assignment of Error No. 2:

{¶ 36} THE APPELLANT WAS PREJUDICED BY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

{¶ 37} Crockett argues in his second assignment of error that his trial court was ineffective for allowing the state to try the having weapons under disability charge to a jury, as



well as stipulating to the admittance of the redacted phone call between himself and the unnamed female.

{¶ 38} The United States Supreme Court established a two-part test in regard to ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). That test requires an appellant to establish that first, "his trial counsel's performance was deficient; and second, that the deficient performance prejudiced the defense to the point of depriving the appellant of a fair trial." *State v. Myers*, 12th Dist. Fayette No. CA2005-12-035, 2007-Ohio-915, ¶ 33. Regarding the first prong, an appellant must show that his counsel's representation "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The second prong requires the appellant to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

{¶ 39} Crockett first argues that his trial counsel was ineffective for not having a bench trial on the having weapons under disability charge because his prior conviction was the sole basis for the jury's guilty verdict. Despite his assertion, however, the jury's verdict was not solely premised upon the fact that Crockett had a prior conviction for a drug-related offense. Instead, the jury heard evidence that Crockett wiped down the gun, and that the gun was located in the same safe as large amounts of cocaine, heroin, and cash. In addition to the prior conviction, the state had to prove that Crockett possessed the gun, which it did by presenting evidence that Crockett wiped the gun of his fingerprints.

{¶ 40} Moreover, the trial court instructed the jury that Crockett's prior conviction was to be used for a limited purpose. Within the jury instructions, the trial court informed the jury that Crockett's prior conviction

for drug possession was received only for a limited purpose. You may not consider it to prove character of the defendant in order to show he acted in conformity with that character. You may

consider that evidence only for the purpose of determining whether or not this Defendant was under disability at the time in question. It cannot be considered for any other purpose.<sup>1</sup>

{¶ 41} Given the other evidence of guilt, as well as the trial court's instruction that the conviction could not be used as proof of Crockett's character or acts in conformity with that character, Crockett has failed to prove that the results of his trial would have been different had the having weapons under disability charge been tried separately.

{¶ 42} Crockett also argues that his counsel was ineffective for stipulating to the redacted phone call because the jury was given the statements out of context. Crockett asserts that because of the redactions, it was "impossible to determine the context of the conversation." However, Crockett does not indicate what the proper context was, or in what way the redacted portions would have demonstrated that Crockett and the female were discussing a gun other than the one seized from the safe on the night of the probation search.

{¶ 43} Crockett does not explain in what way the results of his trial would have been different, other than to argue that the jury would have been able to determine the context of the statements had it been given the entire phone call. However, and even if the jury had been given the entire phone call, it would not have changed the fact that Crockett is heard admitting that he wiped down the gun.<sup>2</sup>

{¶ 44} Crockett's defense counsel was provided the full recording during discovery, and did not believe that any other portion of the phone call would have proven helpful to Crockett or provided any necessary context. We will not question the obvious trial strategy

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1. A jury is presumed to follow and comply with instructions given to them by the trial court. *State v. Shouse*, 12th Dist. Brown No. CA2013-11-014, 2014-Ohio-4620, ¶ 13.

2. Crockett does not direct us to any portion of the phone call that if played would have provided facts that change the context in which the jury heard his comments regarding the gun.

connected with determining what limited amount of the damaging phone call should be played for the jury.

{¶ 45} Furthermore, a complete transcript of the phone call was included in the record. We have reviewed the complete transcript and find that nothing within the remainder of the phone call would have provided necessary context, and nothing in the phone call indicates in any way that Crockett was not talking about the gun found in the safe when he admitted that he wiped it down.

{¶ 46} In fact, from the beginning of the phone call until the end, Crockett is heard discussing the case, the charges against him, the possibility of posting bond, and facing felony charges. At no time did Crockett change the course of the conversation away from his current charges, and at no time did the conversation indicate that any other gun was being discussed. There is no indication whatsoever that the other aspects of the phone call would have allowed the jury to believe anything other than Crockett and the female were discussing the gun seized from Ruth's home. As such, Crockett has failed to demonstrate that the results of his trial would have been different had the jury heard the entire phone call.

{¶ 47} After reviewing the record, we find that Crockett received effective assistance of counsel. Therefore, Crockett's second assignment of error is overruled.

{¶ 48} Judgment affirmed.

HENDRICKSON and M. POWELL, JJ., concur.