

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO :
Plaintiff- Appellee : C.A. Case No. 2005-CA-49
vs. : T.C. Case No. 04-CR-800
DIONDRAY BEAL : (Criminal Appeal from Common
Pleas Court)
Defendant-Appellant :

.....

O P I N I O N

Rendered on the 12th day of May, 2006.

.....

STEPHEN A. SCHUMAKER, Prosecuting Attorney, By: WILLIAM H. LAMB, Assistant Prosecuting Attorney, Atty. Reg. #0051808, 50 E. Columbia Street, P.O. Box 1608, Springfield, Ohio 45501

Attorneys for Plaintiff-Appellee

JOHN C. MEEHLING, Atty. Reg. #0077630, 4625 Far Hills Avenue, Dayton, Ohio 45429

Attorney for Defendant-Appellant

.....

BROGAN, J.

{¶ 1} Diondray Beal appeals from his conviction and sentence on one count of possession of crack cocaine.

{¶ 2} Beal advances two assignments of error on appeal. First, he contends the trial court erred in denying a Crim.R. 29 motion for acquittal during his trial. Second, he claims his conviction is against the manifest weight of the evidence.

{¶ 3} The present appeal stems from Springfield Police Officer Travis Baader's

observation of Beal asleep in a parked car. At trial, Baader testified that Beal appeared to be passed out, and Baader woke him up to be sure he was alright. After establishing Beal's identify, Baader discovered that he had an outstanding arrest warrant. When placing Beal under arrest for the warrant, Baader discovered a plastic bag of crack cocaine in his pants pocket.

{¶ 4} Beal also testified at trial and provided a somewhat different version of events. According to Beal, he pulled his car over and passed out on the night in question. He awoke when police officers opened his car doors and asked him his name. Beal stated that he was arrested on the outstanding warrant. Beal testified that an officer then discovered the drugs in the car's ashtray. Beal also told the jury that the car did not belong to him and that he did not know the ashtray contained a bag of crack cocaine.

{¶ 5} Notwithstanding Beal's testimony, the jury found him guilty. The trial court subsequently sentenced him to ten months in prison, imposed a fine, and suspended his driver's license for two years. This timely appeal followed.

{¶ 6} In his first assignment of error, Beal contends the trial court erred in denying his Crim.R. 29 motion for acquittal during trial. In support, Beal relies on his own testimony to establish that he did not actually or constructively possess any drugs. He bases this argument on the premise that the crack cocaine was found in the car's ashtray.

{¶ 7} Upon review, we find no merit in Beal's argument. A Crim.R. 29 motion challenges the legal sufficiency of the evidence. When a defendant challenges the sufficiency of the evidence, he is arguing that the State presented inadequate evidence on each element of the offense to sustain the verdict as a matter of law. *State v. Hawn* (2000), 138 Ohio App.3d 449, 471. "An appellate court's function when reviewing the

sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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, at paragraph two of the syllabus.

{¶ 8} Beal was convicted of crack cocaine possession. His only argument is that the State presented insufficient evidence to prove "possession," which means "having control over a thing or substance[.]" R.C. §2925.01(K). In making his argument, however, Beal ignores officer Baader's testimony. As noted above, Baader testified that he found the drugs in Beal's pocket rather than in an ashtray. Viewing the evidence in a light most favorable to the State, the jury certainly could have found, based on Baader's testimony, that Beal possessed the crack cocaine. Therefore, the State presented legally sufficient evidence. Beal's first assignment of error is overruled.

{¶ 9} The manifest-weight-of-the-evidence issue raised in Beal's second assignment of error is equally unpersuasive. Beal claims his conviction is against the manifest weight of the evidence because Baader's testimony was not credible. In this regard, he stresses the officer's inability to recall what kind of pants he was wearing or who owned the car in which he was found.

{¶ 10} When a conviction is challenged on appeal as being against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine

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. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. A judgment should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 11} Here the conflicting nature of the trial testimony does not persuade us that Beal’s conviction is against the weight of the evidence. We previously have recognized that one function of the trier of fact is to resolve conflicting testimony. *State v. Palmer*, Montgomery App. No. 20713, 2005-Ohio-4517. In the present case, the jury resolved the testimonial conflicts in favor of the State, finding Baader’s testimony to be the most credible. Based on our review of the record, we cannot say the jury clearly lost its way in crediting Baader’s version of events. We are not persuaded otherwise by Baader’s inability to recall immaterial details. In short, having reviewed the record, weighed the evidence and all reasonable inferences, and considered the credibility of the witnesses, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice. The evidence does not weigh heavily against Beal’s conviction. His second assignment of error is overruled, and the judgment of the Clark County Common Pleas Court is affirmed.

Judgment affirmed.

.....

WOLFF, J., and FAIN, J., concur.

Copies mailed to:

William H. Lamb
John C. Meehling
Hon. Richard J. O'Neill