[Cite as *State v. Hall*, 2009-Ohio-6390.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 23488
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-4626
v.	:	
	:	(Criminal Appeal from
BRYAN L. HALL	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 4th day of December, 2009.

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FAIN, J.

{¶ 1} Defendant-appellant Bryan L. Hall appeals from his conviction and sentence, following a no-contest plea, upon one count of Possession of Crack Cocaine and one count of Trafficking in Cocaine. Hall contends that the trial court erred when it overruled his motion to suppress evidence. He also contends that his

conviction is against the manifest weight of the evidence.

{¶ 2} A conviction predicated upon a plea of no contest cannot be against the manifest weight of the evidence, because it is not based upon evidence, but upon the defendant's plea of no contest. Upon this record, we conclude that the police officers present had probable cause to arrest Hall for drug offenses, which meant that they could search his person incident to arrest. We further conclude that the police were permitted to search the apartment from which Hall had come. They had the written consent to search of the person claiming to be the tenant of the apartment, and Hall, did not claim any privacy interest in the apartment, either at that time, or subsequently.

{¶ 3} Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 4} Dayton Police Detective Keith P. Coberly was working undercover when he contacted a person known to him as a drug addict and asked the addict where he could get some crack cocaine. The addict, whose identity was not identified at the suppression hearing, said that he had been buying his crack cocaine at Apartment Number 610 in the Holton House, 211 South Wilkinson Street, in Dayton.

{¶ 5} Coberly made arrangements to make an attempt to purchase drugs at that location in the presence of two other plainclothes detectives and the addict. The plan was for Coberly to purchase the drugs, himself. Uniformed officers and another detective waited out front.

{¶ 6} It was never made clear at the suppression hearing whether the drug

addict knew that Coberly was a plainclothes detective, or thought that Coberly was someone who wanted to buy crack cocaine.

{¶ 7} With Coberly looking on, the drug addict knocked on the door of the apartment. Hall responded by opening the door. The drug addict told Hall that "we wanted a couple of twenty's." Coberly testified that: "In street drug terminology a twenty is $20 worth of crack cocaine or 0.20 grams of crack cocaine."

{¶ 8} Hall looked at Coberly and one of the other plainclothes detectives and told them "to get out of the hallway." Hall then went back inside the apartment and closed the door.

{¶ 9} Although the plan had been for Coberly to make the buy himself, Hall's evident skittishness toward Coberly and the other undercover officer caused Coberly to change the plan and give the drug addict two $20 bills to make the purchase. The addict had not been searched previously to ensure that he had no drugs upon his person. This is consistent with the fact that Coberly had intended to make the purchase himself, and may also reflect the fact that the drug addict did not know that he was in the company of police officers. Again, the record is not clear on that point.

{¶ 10} In any event, the drug addict knocked again on the apartment door, after having been given the two $20 bills. Coberly and at least one other undercover officer were still there in the hallway, looking on. Hall opened the door and allowed the drug addict to enter. After "just a matter of a few minutes," the drug addict opened the door and walked out. Hall was "standing in the doorway and he held the door open and he was looking at me and he had a rubber glove on his left hand." Coberly immediately asked the addict to "give me the dope," and the addict

responded by doing so. The addict had not had that hand in his pocket since leaving the apartment. The addict then took off running.

{¶ 11} Coberly and the other detectives then began forcing their way into the apartment with the intention of arresting Hall for drug trafficking. Hall resisted the opening of the door, which had not been completely closed since the drug addict left, but the officers succeeded in pushing their way in.

{¶ 12} Hall was arrested and searched. "A considerable amount of crack cocaine" was recovered from inside the upper rear waistline of Hall's pants.

{¶ 13} The only person, besides Hall, found in the apartment was a woman. She said it was her apartment, and gave the officers consent, in writing, to search the apartment. Hall did not claim, either then or later, to have had a privacy interest in the apartment. Drugs and a digital scale were found in the apartment.

{¶ 14} Hall was arrested. He was charged by indictment with: one count of Possession of Crack Cocaine, in an amount equaling or exceeding five grams, but less than ten grams, in violation of R.C. 2925.11(A); one count of Selling or Offering to Sell Crack Cocaine, in an amount less than one gram, in violation of R.C. 2925.03(A)(1); and one count of Possession of Criminal Tools, in violation of R.C. 2923.24(A).

{¶ 15} Hall moved to suppress the evidence, contending that it was obtained as the result of an unlawful search and seizure. Following a hearing, the trial court overruled Hall's motion to suppress. Thereafter, Hall pled no contest to the Possession of Crack Cocaine and Selling or Offering to Sell Crack Cocaine counts, and the Possession of Criminal Tools count was dismissed.

{¶ 16} Hall was found guilty in accordance with his plea. He was sentenced to two years on the Possession charge, a felony of the third degree, and to ten months on the Selling or Offering to Sell charge, a felony of the fifth degree. The trial court imposed the sentences concurrently. The trial court found Hall to be indigent, and did not impose a fine. The trial court did suspend Hall's driver's license for six months.

{¶ 17} From his conviction and sentence, Hall appeals.

II

{¶ 18} Hall's First Assignment of Error is as follows:

{¶ 19} "THE TRIAL COURT ERRED BY DENYING BRYAN HALL'S MOTION TO SUPPRESS SINCE THE DAYTON POLICE HAD NO PROBABLE CAUSE FOR A WARRANT-LESS SEARCH OF HIS RESIDENCE OR PERSON."

{¶ 20} In his brief, Hall makes much of the fact that none of the police officers actually saw what happened inside the apartment where he was, so that they were relying upon information from an informant whose reliability was never proven. That would be a better, and perhaps meritorious, argument if the officers had relied exclusively upon information received from the drug addict who went inside the apartment with two $20 bills, and came out with drugs. But they didn't rely exclusively upon information received second-hand from the addict.

{¶ 21} The officers witnessed the conversation between the addict and Hall, which Coberly construed, based upon his experience, as a proposal by the addict to buy a specified amount of crack cocaine from Hall. This was, of course, in line with

what the drug addict had been told they were there to do.

{¶ 22} To be sure, Hall did not immediately accept the addict's proposal, instead telling those outside the apartment to get out of the hall, followed by his going back inside the apartment and closing the door. Nevertheless, the proposed drug transaction, which was the only stated reason for the undercover officers and the drug addict having initiated contact with Hall at the apartment, provided a context for what followed. This was the addict's again knocking at the door, Hall's opening the door, and then re-entering the apartment with the drug addict in tow. When the addict emerged from the apartment a few minutes later, with Hall at the door, and, upon being told by Coberly to "give me the dope," to which the addict responded by giving Coberly drugs from his hand, which had not been in the addict's pocket since his emergence from the apartment, this was strong corroborative evidence that a drug transaction had just taken place in the apartment.

{¶ 23} Indeed, it appears from this record that the police officers never had any express, direct information from the drug addict that he had purchased drugs in the apartment, the addict having decided, apparently, that this would be the ideal time to take his leave, without saying anything. The evidence that a drug transaction had just taken place in the apartment was all circumstantial, based upon what the officers actually saw and heard.

{¶ 24} We are satisfied that this circumstantial evidence, set forth in detail in Part I, above, gave Coberly and the other officers probable cause to believe that a drug transaction had just taken place in the apartment, in which Hall had participated, thereby allowing them to arrest Hall and search his person. The search of the

apartment was with the consent of the tenant. Hall's First Assignment of Error is overruled.

III

{¶ 25} Hall's Second Assignment of Error is as follows:

{¶ 26} "APPELLANT'S CONVICTION AND SENTENCING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 27} A conviction following a no-contest plea does not derive from evidence adduced at a trial, but from the no-contest plea, itself, which is "an admission of truth of the facts alleged in the indictment[.]" Crim. R. 11(B)(2). Therefore, a conviction based upon a no-contest plea is not amenable to review on appeal to see whether it is against the manifest weight of the evidence. *State v. McGhee* (January 18, 1995), Montgomery App. No. 14515.

{¶ 28} Hall's Second Assignment of Error is overruled.

IV

{¶ 29} Both of Hall's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and FROELICH, JJ., concur.

Copies mailed to:

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