

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 08CA3065
 :
 v. :
 :
 Teresa A. Johnson, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. : **Released 6/30/09**

APPEARANCES:

Eric W. Brehm, Brehm & Associates, Columbus, Ohio, for appellant.

Michael M. Ater, Ross County Prosecuting Attorney, and Jeffrey C. Marks, Assistant Ross County Prosecuting Attorney, Chillicothe, Ohio, for appellee.

Harsha, J.:

{¶1} On appeal Teresa A. Johnson argues that there was insufficient evidence to support her conviction for conveying drugs into the Ross County Jail and that the conviction was against the manifest weight of the evidence. The State presented an inmate who testified she watched Johnson remove a pill bottle from her vagina and then distribute pills to other inmates, including the witness. Johnson attacks the credibility of the inmate witness and points to evidence that there were other sources in the jail for illicit drugs. However, we leave credibility determinations and the choice between two rational factual theories to the jury. Because the State presented ample evidence that Johnson was the source of the illegal drugs, we affirm her conviction.

I. Facts

{¶2} On September 18, 2007, Johnson, an inmate at the Ross County Jail, was granted furlough to see her doctor. Upon her return to the jail that same day, Johnson was patted down, but was not strip-searched or given a body cavity search.

{¶3} The next day, Shawna Ott, a nurse employed at the jail, was distributing medications when she noticed that Johnson and three other female inmates in C-pod appeared disoriented. Two of the inmates were complaining of nausea and vomiting. Ms. Ott then notified Sergeant Albert Cydrus, who also witnessed the inmates in a disoriented state and vomiting. Over the course of the day, Johnson's condition worsened and she was transported to the hospital.

{¶4} On September 20, 2007, an inmate gave Ms. Ott a morphine pill. Ms. Ott then conducted drug tests on the three inmates in C-pod. All three tests were positive for opiates.

{¶5} A week later Johnson returned to the jail from the hospital. Upon her arrival, she placed two prescription bottles in the medical basket. One bottle contained morphine pills and the other contained an antibiotic. Ms. Ott then performed a drug test, which was positive for opiates, on Johnson. Based on this information, Sergeant Cydrus conducted an interview with Johnson and she was later indicted for illegal conveyance of prohibited items onto the grounds of a detention facility. A jury found Johnson guilty and the trial court sentenced her to two years in prison.

II. Assignment of Error

{¶6} Johnson appeals her sentence and presents one assignment of error:

THE TRIAL COURT DID ERR WHEN IT ENTERED JUDGMENT
AGAINST THE DEFENDANT WHEN THE EVIDENCE WAS

INSUFFICIENT TO SUSTAIN A CONVICTION AND WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

III. Sufficiency of the Evidence

{¶7} First, Johnson asserts the State failed to produce sufficient evidence to obtain a conviction. 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.” *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. “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.” *Id.*, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. Our evaluation of the sufficiency of the evidence raises a question of law and does not permit us to weigh the evidence. *State v. Simms*, 165 Ohio App.3d 83, 2005-Ohio-5681, 844 N.E.2d 1212, at ¶9, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶8} Johnson was convicted of one count of illegal conveyance of drugs onto the grounds of a detention facility in violation of R.C. 2921.36, which provides:

(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility * * * any of the following items:

* * *

(2) Any drug of abuse, as defined in section 3719.011 of the Revised Code;¹

* * *

(G)(2) Whoever violates division (A)(2) of this section * * * involving any drug of abuse is guilty of illegal conveyance of drugs of abuse onto the

¹ R.C. 3719.011 describes a drug of abuse as “any controlled substance as defined in section 3719.01 of the Revised Code * * *.” R.C. 3719.01 provides opiates are a controlled substance.

grounds of a detention facility * * *, a felony of the third degree.

* * *

{¶9} Johnson argues the only direct evidence against her comes from the testimony of an inmate whose credibility is highly suspect. However, as we noted, we do not determine the weight to be given the evidence in this analysis. Moreover, “ * * * proof of guilt may be made by circumstantial evidence as well as by real evidence and direct or testimonial evidence, or any combination of these three classes of evidence. All three classes have equal probative value * * *.” *Jenks*, supra, at *272, citing 1A Wigmore, Evidence (Tillers Rev.1983) 944, Section 24, et seq. The evidence presented at trial revealed that: 1) the Ross County Jail is a detention facility; 2) Johnson left the jail on a medical furlough and when she returned she was not strip-searched or given a body cavity search; 3) an inmate witnessed Johnson removing a pill bottle from her vagina; 4) Johnson passed the pills underneath the door to other inmates in the pod; 5) within hours of Johnson’s return, she and three other inmates became ill; 6) Johnson went to the hospital for her illness; 7) an inmate gave the jail nurse a morphine pill; 8) when Johnson returned from the hospital, she submitted a bottle of morphine pills to the infirmary; and 9) Johnson and three other inmates tested positive for opiates.

{¶10} Based on this evidence, any rational trier of fact could have found that Johnson brought the morphine into the jail. The jury could reasonably infer that Johnson had access to the morphine as well as the ability to conceal and distribute it. Thus, we conclude that the State produced sufficient evidence that would convince the average mind beyond a reasonable doubt that Johnson knowingly conveyed a drug of abuse onto the grounds of a detention facility.

IV. Manifest Weight

{¶11} Johnson also argues that her conviction was not supported by the manifest weight of the evidence. “Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, citing *State v. Robinson* (1955), 162 Ohio St. 486, 487, 124 N.E.2d 148. In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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. See *Thompkins*, citing *Martin*, supra, at 175. A reviewing court “may not reverse a conviction when there is substantial evidence upon which the trial court could reasonably conclude that all elements of the offense have been proven beyond a reasonable doubt.” *State v. Johnson* (1991), 58 Ohio St.3d 40, 42, 567 N.E.2d 266, citing *State v. Eskridge* (1988), 38 Ohio St.3d 56, 526 N.E.2d 304, paragraph two of the syllabus.

{¶12} Johnson’s primary attack rests upon her claim that the witness testimony was not worthy of any credibility because of the inmate’s criminal history, which included multiple crimes of dishonesty. However, even in acting as a thirteenth juror we must still remember that the weight to be given evidence and the credibility to be afforded testimony are issues to be determined by the trier of fact. *State v. Frazier* (1995), 73 Ohio St.3d 323, 339, 1995-Ohio-235, 652 N.E.2d 1000, citing *State v. Grant*

(1993), 67 Ohio St.3d 465, 477, 1993-Ohio-171, 620 N.E.2d 50. The fact finder “is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. Thus, we will only interfere if the fact finder clearly lost its way and created a manifest miscarriage of justice.

{¶13} The State produced substantial direct and circumstantial evidence that would allow a reasonable juror to conclude that Johnson brought the morphine into the jail and distributed it. Therefore, we cannot say that the jury lost its way. Because the inmate witness was not so unbelievable as to be totally lacking in credibility, we find no manifest miscarriage of justice in the fact that the jury believed her testimony, notwithstanding the potential for other sources within the jail for the drugs.

V. Conclusion

{¶14} After reviewing the entire record, we find that the State presented sufficient evidence from which a jury could conclude, beyond a reasonable doubt, that Johnson committed the offense of illegal conveyance of drugs onto the grounds of a detention facility, and that the conviction is supported by the evidence. Thus, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.