

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

STATE OF OHIO,	:
	:
Plaintiff-Appellee,	: Case No. 09CA14
	:
vs.	: Released: January 27, 2010
	:
JEREMIAH J. HOLDREN,	: <u>DECISION AND JUDGMENT</u>
	: <u>ENTRY</u>
Defendant-Appellant.	:

APPEARANCES:

Lori Pritchard Clark, Circleville, Ohio, for Appellant.

Laina Fetherolf-Jordan, Hocking County Prosecutor, and William L. Archer, Jr., Hocking County Assistant Prosecutor, Logan, Ohio, for Appellee.

McFarland, P. J.:

{¶1} Appellant, Jeremiah J. Holdren, appeals his conviction in the Hocking County Court of Common Pleas after a jury found him guilty of two counts of drug trafficking, in violation of R.C. 2925.03(A)(1)(C)(6)(a), a felony of the fifth degree, and R.C. 2925.03(A)(1)(C)(6)(b), a felony of the fourth degree. On appeal, Appellant contends that 1) the State of Ohio failed to prove each and every element of the crime charged beyond a reasonable doubt and that the verdict entered against him was against the manifest weight of the evidence and in violation of due process; and 2) the

trial court erred to his prejudice and abused its discretion when it sentenced him to the maximum prison term which was clearly and convincingly contrary to law. Because we conclude that Appellant's convictions were not against the manifest weight of the evidence, we overrule Appellant's first assignment of error. Further, because we conclude that the trial court did not err or abuse its discretion in sentencing Appellant to maximum and consecutive sentences, we overrule Appellant's second assignment of error. Thus, we affirm the judgment of the trial court.

FACTS

{¶2} On November 17, 2008, Appellant, Jeremiah J. Holdren, was indicted in the Hocking County Court of Common Pleas on two counts¹ of drug trafficking, in violation of R.C. 2925.03(A)(1)(C)(6)(a) and (C)(6)(b)², felonies of the fifth and fourth degrees, respectively. Each charge stemmed from investigations by the Fairfield-Hocking Major Crimes Unit (MCU), which had set up and conducted controlled drug buys from Appellant with the use of a confidential informant. Appellant denied the charges and the matter proceeded to a jury trial on February 19, 2009.

¹ Appellant was also indicted on two counts of receiving stolen property, in violation of R.C. 2913.51.(A), both felonies of the fourth degree. However, the jury found Appellant not guilty of these charges and they are not at issue in the present appeal.

² (C)(6)(b) is an enhancement provision under the statute, elevating the crime from a fifth degree felony to a fourth degree felony when the offense was committed "in the vicinity of a juvenile."

{¶3} At trial, the State presented several witnesses, including: 1) Stephen Tripp, a confidential informant; 2) Detective Dustin Robison, employed by the Hocking County Sheriff's Office and the Fairfield Hocking Major Crimes Unit; 3) Jeffrey Houser and Kenneth Ross, both employed by the Ohio Bureau of Criminal Identification and Investigation, who testified regarding the analysis of the substances recovered as a result of the controlled buys; 4) Crystal Williamson, Appellant's cousin; and 5) Sergeant Kevin Groves, employed with the Hocking County Sheriffs' Office.

{¶4} The confidential informant, (C.I.), testified to having a prior felony drug conviction. He also testified to working with the MCU to conduct controlled drug buys from Appellant on two separate occasions, once in September of 2008 and once in October of 2008, and that he was paid by the MCU for his help. C.I. testified that as part of each controlled buy, he would meet with law enforcement and would place a call to Appellant either with his cell phone or a detective's cell phone to set up the purchase. He further testified that he would be searched prior to the buy, given instructions, would be wired and given recorded money, and that officers would follow him to the destination, which was Appellant's residence. C.I. testified that on both occasions he purchased heroin from Appellant for sixty dollars cash. C.I. testified that after each purchase law

enforcement would follow him back to their meeting spot, where he would turn over the drugs and be searched again. C.I. testified that the search consisted of a search of his mouth, boxers, pockets, shoes, socks, and vehicle. Finally, C.I. testified that at the time of the second purchase, Appellant was holding a child in his arms when he made the drug transaction.

{¶15} Detective Dustin Robison testified that he conducted surveillance of the controlled buys described by C.I. by following C.I. to the area of Appellant's residence, staying there during the transaction and listening to transactions via an audio transmitter, and then, once C.I. left Appellant's residence, immediately following C.I. back to their meeting location. Detective Robison testified that C.I.'s person and vehicle were searched both prior to and after each transaction. Detective Robison testified that he was able to identify Appellant's voice during the transaction over the audio transmitter and that after the September 26, 2008, controlled buy, C.I. handed over heroin packaged in foil.

{¶16} Detective Robison testified to another controlled buy that took place soon after, in October. He explained that the same procedures and precautions were used relative to the confidential informant and that during the buy he was again able to conduct surveillance via audio transmitter.

Detective Robinson stated that he heard C.I. ask Appellant a question to which Appellant responded “baby’s first bib,” referring to the wording on the bib that the child he was holding was wearing. Detective Robison testified that after the transaction, C.I. handed over two balloons of heroin to law enforcement. Sergeant Kevin Groves and Appellant’s cousin, Crystal Williamson, also testified at trial; however, their testimony related to the receiving stolen property charges for which Appellant was found not guilty.

{¶7} The defense did not present any evidence and the matter was submitted to the jury. Ultimately, the jury convicted Appellant on both counts of drug trafficking, also finding with respect to the second count that the transaction had been committed in the presence of a juvenile. The trial court sentenced Appellant to maximum sentences on each conviction, to be served consecutively, for a total sentence of two and a half years. It is from these convictions and sentences that Appellant now brings his timely appeal, assigning the following errors for our review.

ASSIGNMENTS OF ERROR

- “I. THE STATE OF OHIO FAILED TO PROVED (SIC) EACH AND EVERY ELEMENT OF THE CRIME CHARGED BEYOND A REASONABLE DOUBT. AS SUCH, THE GUILTY VERDICT WAS ENTERED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF DUE PROCESS.
- II. THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT AND ABUSED ITS DISCRETION WHEN IT

SENTENCED HIM TO THE MAXIMUM PRISON TERM WHICH WAS CLEARLY AND CONVINCINGLY CONTRARY TO LAW.”

ASSIGNMENT OF ERROR I

{¶18} In his first assignment of error, Appellant contends that his conviction was against the manifest weight of the evidence. When an appellate court reviews a claim that a verdict is against the manifest weight of the evidence, the conviction may not be reversed unless 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. See *State v. Earle* (1997), 120 Ohio App.3d 457, 473, 698 N.E.2d 440; *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814; *State v. Davis* (1988), 49 Ohio App.3d 109, 113, 550 N.E.2d 966. Because the gist of the assignment of error also challenges the credibility of prosecution witnesses, we also point out that the weight of the evidence and the credibility of witnesses are issues that the trier of fact must decide. *State v. Dye* (1998), 82 Ohio St.3d 323, 329, 1998-Ohio-234, 695 N.E.2d 763; *State v. Ballew* 76 Ohio St.3d 244, 249, 1996-Ohio-81, 667 N.E.2d 369; *State v. Williams*, 73 Ohio St.3d 153, 165, 1995-Ohio-275, 652 N.E.2d 721. The trier of fact is free to believe all, part or none of the testimony of each witness. *State v. Nichols* (1993), 85 Ohio App.3d 65, 76, 619 N.E.2d 80; *State v. Caldwell* (1992), 79 Ohio

App.3d 667, 679, 607 N.E.2d 1096; *State v. Harriston* (1989), 63 Ohio App.3d 58, 63, 577 N.E.2d 1144.

{¶9} Appellant was convicted of two separate counts of drug trafficking, under R.C. 2925.03(A)(1)(C)(6)(a) and 2925.03(A)(1)(C)(6)(b)³, the first violation being a felony of the fifth degree and the second being a felony of the fourth degree. R.C. 2924.03(A)(1) provides that:

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance[.]

Under this assignment of error, Appellant specifically argues that no corroborated evidence was presented which proved Appellant acted “knowingly,” and, as such, the State failed to prove each and every element of trafficking in drugs, which has a required mens rea of “knowingly.”

Appellant also challenges the jury’s reliance on the testimony of a confidential informant, who is a convicted felon and who was charged with an additional, unrelated felony, after acting as a confidential informant in this case. Finally, Appellant challenges the procedure used to conduct the controlled drug buy, citing that the confidential informant was not body cavity searched and that the investigating officers did not witness the

³ As set forth above, (C)(6)(b) is an enhancement provision under the statute, elevating the crime from a fifth degree felony to a fourth degree felony when the offense was committed “in the vicinity of a juvenile.” Appellant does not specifically challenge this specification on appeal.

informant in the presence or vicinity of Appellant at the time the controlled buys were conducted.

{¶10} As set forth above, Detective Dustin Robison and confidential informant Stephen Tripp both testified at trial as to the roles they played in the controlled drug buys at issue. Detective Robison testified as to the MCU's general procedures and precautions when utilizing confidential informants and also testified specifically to the precautions that were employed in the present case. Detective Robison testified that Tripp was thoroughly searched prior to and after each buy, that Robison was able to conduct surveillance via audio transmitter, was able to identify Appellant via the transmitter and recovered substances later confirmed to be heroin after each buy.

{¶11} C.I. testified that he had known Appellant for about ten years, he purchased heroin from Appellant on two occasions at Appellant's residence in connection with MCU and that during the second purchase, Appellant was holding a child during the transaction. Additionally, although not a body cavity search, C.I. testified to the thoroughness of the searches performed both of his person and his vehicle before and after each transaction. Further, testimony was presented regarding the chain of custody

of the drugs recovered, as well as the laboratory analysis confirming the substances as heroin.

{¶12} In light of this evidence, we cannot conclude that the jury lost its way and created a manifest miscarriage of justice by finding Appellant guilty of trafficking in drugs. We find Appellant's argument that the State failed to prove that the crimes at issue were committed knowingly to be wholly without merit. We further note, with regard to Appellant's suggestion that the testimony that the confidential informant was unreliable, that issues regarding the weight to be given to evidence and the credibility of witnesses are reserved for the trier of fact. *Dye, Ballew and Williams*, supra. Further, as set forth above, the trier of fact is free to believe all, part, or none of the testimony of any witness who appears before it. See *Nichols, Caldwell* and *Harriston*, supra. Accordingly, Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

{¶13} In his second assignment of error, Appellant contends that the trial court erred to his prejudice and abused its discretion when it sentenced him to the maximum prison term which, he claims, was clearly and convincingly contrary to law. Specifically, Appellant argues that the trial court did not undertake an analysis of Ohio Revised Code Sections 2929.11

and 2929.12 before pronouncing sentence, claiming that his prior record was the only issue discussed at the hearing.

{¶14} Our review of a trial court's felony sentence involves two steps. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124; see, also, *State v. Moman*, Adams App. No. 08CA876, 2009-Ohio-2510, at ¶ 6 (involving a community control violation). First, we “must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.” *Kalish* at ¶ 4. If this first prong is satisfied, we then review the trial court's decision under an abuse-of-discretion standard. *Id.*

{¶15} Trial courts “are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences.” *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at paragraph seven of the syllabus; See, also, *State v. Warren*, Pike App. No. 09CA792, 2009-Ohio-5683 at ¶12. However, trial courts must still consider R.C. 2929.11 and R.C. 2929.12 before imposing a sentence. See *Kalish* at ¶ 13.

{¶16} “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable,

arbitrary or unconscionable.” *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. As we explained in *State v. Davis*, Highland App. No. 06CA21, 2007-Ohio-3944: “ ‘An “abuse of discretion” has also been found where a sentence is greatly excessive under traditional concepts of justice or is manifestly disproportionate to the crime or the defendant. *Woosley v. United States* (C.A.8, 1973), 478 F.2d 139, 147.* * * Where the severity of the sentence shocks the judicial conscience or greatly exceeds penalties usually exacted for similar offenses or defendants, and the record fails to justify and the trial court fails to explain the imposition of the sentence, the appellate court’s [sic] can reverse the sentence. [*Id.*] This by no means is an exhaustive or exclusive list of the circumstances under which an appellate court may find that the trial court abused its discretion in the imposition of [a] sentence in a particular case.’ ” *Davis* at ¶ 42, quoting *State v. Elswick*, Lake App. No. 2006-L-075, 2006-Ohio-7011, at ¶ 49, in turn quoting *State v. Firouzmandi*, Licking App. No. 2006-CA-41, 2006-Ohio-5823, at ¶ 56; see, also, *State v. Taylor*, Athens App. No. 08CA23, 2009-Ohio-3119, at ¶ 15.

{¶17} Here, we find that Appellant’s maximum and consecutive sentences are not clearly and convincingly contrary to law. The sentencing entry reflects that the trial court complied with the governing statutes. The

court specifically cited the applicable sentencing statutes and stated that it had considered them in determining whether to impose a prison sentence upon Appellant. As noted above, the court was not required to make specific findings concerning the various factors in these statutes. See *State v.*

Woodruff, Ross App. No. 07CA2972, 2008-Ohio-967, at ¶ 16, citing *State v. Arnett*, 88 Ohio St.3d 208, 215, 724 N.E.2d 793, 2000-Ohio-302.

Additionally, the court's twelve and eighteen-month sentences were within the range allowed for fourth and fifth-degree felonies. See R.C.

2929.14(A)(4) and (5) (stating that the sentencing range for a fourth-degree felony is from six to eighteen months and the range for a fifth-degree felony is from six to twelve months). See, also, *State v. Voycik*, Washington App. Nos. 08CA33 & 08CA34, 2009-Ohio-3669, at ¶ 9-11. Thus, under the first step of our analysis, the court's sentence is not contrary to law.

{¶18} Under the second step of our analysis, we find that the court did not abuse its discretion by imposing maximum and consecutive sentences.

At the sentencing hearing, the court had evidence before it in the form of the presentence investigation, which revealed Appellant's lengthy criminal history. The court noted at the hearing that Appellant's previous

"supervision has just been a mess because he is always re-offending and using drugs." Additionally, the court stated in its sentencing entry that it had

“considered the record, oral statements and any victim impact statements, as well as the principles and purposes of sentencing under R.C. 2929.11, and the seriousness and recidivism factors under R.C. 2929.12.” The trial court’s entry further states that Appellant’s “extensive criminal history demonstrates that consecutive sentences are necessary to protect the public, to punish the defendant and are not disproportionate to the defendant’s conduct.” Thus, we are unable to state that the trial court acted unreasonably, arbitrarily, or unconscionably by sentencing Appellant to maximum and consecutive sentences. Consequently, we find no merit to Appellant second assignment of error.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking 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.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.
For the Court,

BY: _____
Judge Matthew W. McFarland
Presiding 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.