

[Cite as *State v. Picklesimer*, 2015-Ohio-1965.]

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

STATE OF OHIO, :  
 :  
Plaintiff-Appellee, : Case No. 14CA17  
 :  
vs. :  
 :  
JAMES M. PICKLESIMER, : DECISION AND JUDGMENT ENTRY  
 :  
 :  
Defendant-Appellant. :

---

APPEARANCES:

COUNSEL FOR APPELLANT: Jesse A. Atkins, Atkins & Atkins, Attorneys at Law, LLC,  
600 South High Street, Suite 100, Columbus, Ohio 43215

COUNSEL FOR APPELLEE: Judy C. Wolford, Pickaway County Prosecuting Attorney,  
and Jayme Hartley Fountain, Pickaway County Assistant  
Prosecuting Attorney, 203 South Scioto Street, P.O. Box 910,  
Circleville, Ohio 43113

---

CRIMINAL CASE FROM COMMON PLEAS COURT

DATE JOURNALIZED: 4-23-15

ABELE, J.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court judgment of conviction and sentence. A jury found James M. Picklesimer, defendant below and appellant herein, guilty of drug possession in violation of R.C. 2925.11(A).

{¶ 2} Appellant assigns the following error for review:

“THE APPELLANT’S CONVICTION FOR POSSESSION OF  
DRUGS, A FELONY OF THE FIFTH DEGREE, WAS AGAINST  
THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶ 3} On February 6, 2014, Circleville Police Officers Robert Morningstar and Matthew

Hafey responded to a report of a vehicle involved in a drug transaction. The officers located the vehicle and followed it to an apartment complex parking lot. Once the vehicle stopped, the officers exited their cruiser and approached the occupants. Officer Hafey immediately recognized the vehicle's driver as Cleasha Holbrook. Officer Morningstar spoke with appellant, Holbrook's passenger. As Officer Morningstar spoke with appellant, he noticed a glass smoking pipe, commonly used for marijuana, in a purse on the vehicle's backseat. Officer Morningstar asked appellant to exit the vehicle and asked if he "had anything on him." Appellant admitted that he had marijuana inside his jacket. Officer Morningstar then removed the marijuana and further searched appellant, eventually uncovering a baggie that contained a white powdery substance that he believed to be methamphetamine. The officer then arrested appellant. A subsequent search of Holbrook's vehicle also uncovered various items used to manufacture methamphetamine.

{¶ 4} On March 7, 2014, the Pickaway County Grand Jury returned an indictment that charged appellant with (1) the illegal assembly or possession of chemicals for the manufacture of drugs in violation of R.C. 2925.041(A), and (2) the possession of methamphetamine in violation of R.C. 2925.11(A). Appellant pled not guilty. Subsequently, appellant filed a motion to suppress evidence and the trial court overruled his motion.

{¶ 5} On May 29, 2014, the trial court held a jury trial. At trial, Officer Morningstar testified that when he searched appellant, he discovered the white powdery substance that he believed to be methamphetamine. The appellee also presented additional testimony regarding the discovery of various items inside Holbrook's vehicle used to manufacture methamphetamine. Appellant testified and disputed Officer Morningstar's testimony. Appellant claimed that Officer Morningstar did not uncover the baggie that contained the white powdery substance from

appellant's person, but instead, the officer discovered it inside Holbrook's vehicle.

{¶ 6} After hearing the evidence, the jury found appellant not guilty of the illegal assembly or possession of chemicals for the manufacture of drugs, but guilty of possession of methamphetamine. The trial court sentenced appellant to serve twelve months in prison. This appeal followed.

{¶ 7} In his sole assignment of error, appellant contends that his conviction is against the manifest weight of the evidence. Specifically, appellant asserts that the law enforcement officers' testimony is "inconsistent and unpersuasive." Appellant contends that the officers had a "spurious rationale" for stopping the vehicle and for conducting a pat-down search. Appellant additionally argues that the police report contains numerous discrepancies. Appellant asserts that "the officers' testimony \* \* \* reveals a plethora of conflicting testimony, testimony which conflicts with the actual police report, testimony revealing unconstitutional grounds for the pursuit and stop of the suspect's vehicle and evidence and testimony calling in to [sic] question the quality of the police investigative work." Appellant, however, does not dispute that the white powdery substance contained methamphetamine.

{¶ 8} When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court "review[s] 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 jury 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. Beverly, — Ohio St.3d —, 2015-Ohio-219, — N.E.3d —, ¶17 (internal quotation marks omitted); e.g., State v. Hunter, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶119; State v. Thompkins, 78 Ohio

St.3d 380, 387, 678 N.E.2d 541 (1997); State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). If the prosecution presented substantial evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. State v. Eley, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978), syllabus. A reviewing court should find a conviction against the manifest weight of the evidence only in the “exceptional case in which the evidence weighs heavily against the conviction.” Thompkins, 78 Ohio St.3d at 387, quoting Martin, 20 Ohio App.3d at 175; State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 9} Additionally, a reviewing court must bear in mind that credibility generally is an issue for the trier of fact to resolve. E.g., State v. Issa, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); State v. Murphy, 4<sup>th</sup> Dist. Ross No. 07CA2953, 2008–Ohio–1744, ¶31. 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, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). “Thus, we will only interfere if the fact finder clearly lost its way and created a manifest miscarriage of justice.” State v. Davis, 4<sup>th</sup> Dist. Washington No. 09CA28, 2010-Ohio-555, ¶13.

{¶ 10} It is very important to note, however, that “[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony.” State v. Cooper, 170 Ohio App.3d 418, 2007–Ohio–1186, 867 N.E.2d 493, ¶17 (4<sup>th</sup> Dist.), quoting State v. Mason, 9<sup>th</sup> Dist. Summit No. 21397, 2003–Ohio–5785, ¶17; accord State v. Harper, 4<sup>th</sup> Dist. Lawrence No. 14CA19, 2015-Ohio-671, ¶12 (“When conflicting evidence is presented at trial, a conviction is not against

the manifest weight of the evidence simply because the jury believed the testimony presented by the state.”). One function of the jury is to ascertain witness credibility. Seasons Coal, supra. Thus, a jury “can simply reject the defendant’s defense and find the evidence in the state’s case-in-chief more persuasive.” Harper at ¶12. Again, we should not disturb the fact-finder’s resolution of conflicting evidence unless the fact-finder clearly lost its way. Washington, supra.

{¶ 11} In the case sub judice, we are unable to conclude that the jury clearly lost its way when it evaluated the testimony and chose to credit the officers' testimony over appellant's. Although the record reveals some inconsistencies exist, none are so significant as to call the jury's guilty verdict into doubt. State v. Weiss, 4<sup>th</sup> Dist. Athens No. 09CA30, 2010-Ohio-4509, ¶13 (rejecting defendant's argument that conviction against manifest weight of the evidence because officers' testimony was “hopelessly inconsistent”). Moreover, at trial appellant properly and forcefully pointed out the alleged inconsistencies. Thus, the jury was well-aware of appellant's theory that the state's evidence should not be believed. However, the jury obviously rejected appellant's claim that he did not possess methamphetamine and, instead, opted to believe the state's version of the evidence. After our review of the record, we find nothing to indicate that the jury's conclusion that appellant possessed methamphetamine constitutes a manifest miscarriage of justice. In fact, the jury actually found appellant not guilty of the illegal assembly or possession of chemicals for the manufacture of methamphetamine. Thus, the record in the case at bar shows that the jury gave due consideration to all of the evidence, and whether that evidence proved appellant's guilt beyond a reasonable doubt. We do not believe that this is one of the exceptional cases in which the evidence weighs heavily against appellant's conviction. Consequently, the jury's verdict is not against the manifest weight of the evidence.

{¶ 12} To the extent that appellant asserts that the search was unlawful, we observe that appellant challenged the search by filing a motion to suppress evidence. The trial court held a hearing and overruled appellant's motion to suppress. Appellant, however, did not appeal that particular ruling. Thus, we do not address any arguments regarding the search and express no opinion regarding the search's validity.

{¶ 13} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

### JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Pickaway 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, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & McFarland, A.J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, 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.