

[Cite as *State v. Johnson*, 2016-Ohio-5478.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 15CA3518
	:	
vs.	:	
	:	
DEBBIE M. JOHNSON,	:	DECISION AND JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, and Valerie Kunze, Assistant State Public Defender, Columbus, Ohio, for Appellant.

Matthew Schmidt, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED:8-3-16

ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. A jury found Debbie Johnson, defendant below and appellee herein, guilty of the illegal assembly or possession of chemicals for use in the manufacture of methamphetamine with a specification that she committed the offense within one hundred feet of a juvenile, in violation of R.C. 2925.041.

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

“Debbie Johnson’s conviction was not supported by sufficient evidence in violation of Ms. Johnson’s right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.”

{¶ 3} During a routine parole visit to appellant’s residence, where she lived with her three children, law enforcement officers discovered materials that led them to suspect methamphetamine was being manufactured on the premises. A subsequent search confirmed their suspicions.

{¶ 4} On June 19, 2015, the Ross County grand jury returned an indictment that charged appellant with the assembly or possession of one or more chemicals that may be used to manufacture methamphetamine with the intent to manufacture methamphetamine. The indictment further specified that appellant committed the offense in the vicinity of a juvenile.

{¶ 5} On October 19 and 20, 2015, the trial court held a jury trial. The state presented abundant evidence that methamphetamine manufacturing had occurred in an “outbuilding,” located “maybe 50 yards or less” from appellant’s residence. Inside the outbuilding, officers discovered several items used to manufacture methamphetamine: cans of Coleman fuel, a bottle of red lye, a cold pack, pop bottles containing a powdery-blue substance, lithium batteries, starting fluid cans, mason jars, and an HL generator. In a “burn pile” near the outbuilding, officers discovered empty pseudoephedrine packs and lithium batteries. The state also presented evidence that the officers found pseudoephedrine in the master bedroom and an empty to partially empty can of Coleman fuel in the residence’s only bathroom. Officers testified that both Coleman fuel and pseudoephedrine are commonly used to manufacture methamphetamine. The state further presented evidence that both the Coleman fuel and pseudoephedrine were found within one hundred feet of areas to which the children had access.

{¶ 6} After the state rested, appellant moved for a Crim.R. 29(A) judgment of acquittal. Appellant asserted that the state failed to present sufficient evidence to show that she committed the offense within the vicinity of a juvenile, or that she was “anywhere near these materials,” other than “that she was in the home and had used methamphetamine in the past.” Appellant recognized that the state presented evidence that pseudoephedrine and an empty can of Coleman fuel were located inside the residence. She asserted, however, that because the can of Coleman fuel was “empty,” it could not have contained any chemical used in the manufacture of methamphetamine. The court overruled appellant’s motion and explained:

“* * * We’ve got testimony, undisputed at this point in time, * * * that blister packs of pseudoephedrine were found in the master bedroom. There’s testimony from Det. Lewis that the—and other detectives that the children’s bedrooms were down in one part of the house from the master bedroom. Det. Lewis said he didn’t measure it but it was about 15 to 20 feet. He really couldn’t say for sure. So considering that in a light most favorable to the state, this court feels that the state has met its burden so far in proving that this defendant did possess one chemical * * * * within 100 feet of a juvenile.”

{¶ 7} After hearing the evidence, the jury found appellant guilty as charged in the indictment. The trial court sentenced appellant to serve four years in prison. This appeal followed.

{¶ 8} In her sole assignment of error, appellant asserts that the state did not present sufficient evidence to support her conviction. In particular, she contends that the evidence fails to establish that she committed the offense within one hundred feet of a juvenile. Appellant asserts that the bulk of the materials used to manufacture methamphetamine was located in a building more than one hundred feet from the vicinity of a juvenile. Appellant recognizes that an empty or

partially-empty Coleman fuel can and pseudoephedrine were located in the house's master bedroom, but argues that neither item was used in the manufacture of methamphetamine.

{¶ 9} A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. State v. Thompson, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence, an appellate court's inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. Thompson, syllabus. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. E.g., Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jenks, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." Thompson, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶ 10} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. E.g., State v. Hill, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); State v. Grant, 67 Ohio St.3d 465, 477, 620 N.E.2d 50 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. State v. Tibbetts, 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001); State v. Treesh, 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 11} In the case at bar, the state charged appellant with violating R.C. 2925.041, which states:

(A) No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code.

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in schedule I or II. The assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in schedule I or II, with the intent to manufacture a controlled substance in either schedule, is sufficient to violate this section.

The state further alleged that appellant committed the R.C. 2925.041 offense within one hundred feet of a juvenile. R.C. 2925.041(C) specifies:

If the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal assembly or possession of chemicals for the manufacture of drugs is a felony of the second degree, and, except as otherwise provided in division (C)(1) or (2) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

According to R.C. 2925.01(BB),

An offense is “committed in the vicinity of a juvenile” if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

{¶ 12} In the case sub judice, the only element that appellant disputes is whether the state presented sufficient evidence to show that she committed the offense in the vicinity of a juvenile. We therefore limit our review accordingly.

{¶ 13} After our review of the evidence adduced at trial, we believe that the state presented adequate evidence to show that appellant committed the offense within one hundred feet of a juvenile. At least one chemical used to manufacture methamphetamine was located inside the residence where appellant lived with her children. Pseudoephedrine was found in the master bedroom. The master bedroom is located within one hundred feet of appellant's children's bedrooms. The foregoing evidence, if believed, is sufficient to support a finding that appellant committed the offense within one hundred feet of the children.

{¶ 14} Appellant nevertheless contends that our decision in State v. Dyer, 4th Dist. Scioto No. 07CA3163, 2008-Ohio-2711, supports her argument that the state did not present sufficient evidence to support her conviction. We, however, believe that Dyer is distinguishable. In Dyer, the defendant was charged with drug trafficking in the vicinity of a juvenile. A confidential informant made a controlled buy of oxycodone. The transaction occurred in the defendant's driveway, and no one saw any juveniles nearby during the transaction. During a subsequent search of the defendant's residence, law enforcement officers found a prescription bottle containing hydrocodone inside the defendant's bedroom dresser. In a chicken coop located one hundred to one hundred twenty feet from the residence that the defendant shared with his minor granddaughter, the officers discovered bottles containing oxycodone, cocaine, marijuana, morphine, and diazepam. We determined that these facts were insufficient to establish that the defendant trafficked drugs in the vicinity of a juvenile. Specifically, we observed that the state did

not present any evidence to suggest that a juvenile was observed during the controlled drug transaction with the confidential informant. We further noted that the state did not show that the prescription bottle located in the defendant's bedroom dresser was connected with drug trafficking.

{¶ 15} In contrast, in the case sub judice the state presented evidence that the pseudoephedrine found in appellant's master bedroom was involved in manufacturing methamphetamine and that appellant's master bedroom was within one hundred feet of the children. Evidence exists that appellant had purchased pseudoephedrine the day before the search of her property and that when the officers discovered the pseudoephedrine in appellant's bedroom, one box was empty and the other half-full. The officers found empty pseudoephedrine packets in a burn pile and in the outbuilding. All of these circumstances would allow a reasonable juror to conclude that appellant possessed or assembled the pseudoephedrine with the intent to manufacture methamphetamine, and that she committed this offense within one hundred feet of a juvenile. Even if she was not physically involved in the manufacturing process that occurred in the outbuilding, the evidence sufficiently shows that she possessed or assembled pseudoephedrine—a chemical used in the manufacture of methamphetamine—with the intent to manufacture methamphetamine within the vicinity of a juvenile.

{¶ 16} 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 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, 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.

Harsha, J. & McFarland, 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.