[Cite as *State v. Morse*, 2004-Ohio-615.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

vs.

DELLIA MORSE

Defendant-Appellant

: JUDGES:
: Hon. William B. Hoffman, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.
:
:
: Case No. 2003CA00191
:
: OPINION

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2003CR0211(A)
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 9, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
KATHLEEN O. TATARSKY P.O. Box 20049 Canton, OH 44701-0049	ANGELA D. STONE 4884 Dressler Road N.W. Canton, OH 44718

Farmer, J.

{¶1} On March 11, 203, the Stark County Grand Jury indicted appellant, Dellia Morse, on one count of complicity to illegally manufacture drugs in the vicinity of a juvenile in violation of R.C. 2923.03 and R.C. 2925.04. Specifically, appellant was indicted for aiding and abetting Jeramie Heestand in the manufacture and production of a controlled substance, methamphetamines.

{¶2} On April 4, 2003, appellant filed a motion to suppress evidence found in her vehicle. A hearing was held on April 16, 2003. By judgment entry filed April 22, 2003, the trial court denied said motion.

{¶3} A jury trial commenced on April 28, 2003. The jury found appellant guilty as charged. By judgment entry filed May 2, 2003, the trial court sentenced appellant to three years in prison.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS."

II

{¶6} "THE APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶7} Appellant claims the trial court erred in denying her motion to suppress. We disagree.

{¶8} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19; *State v. Klein* (1991), 73 Ohio App.3d 485; *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93; *State v. Claytor* (1993), 85 Ohio App.3d 623; *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 116 S.Ct. 1657, 1663, "…as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶9} Appellant argues exigent circumstances were not presented to justify the opening of two Rubbermaid type containers located in the backseat of her vehicle.

{¶10} On February 8, 2003, Officer Robert Molody of the Alliance Police Department was investigating a complaint concerning a "pink bubbly liquid" located in a garage/shed at a triplex. April 16, 2003 T. at 7. Upon arrival, he smelled a strong odor

of ammonia coming from the garage/shed.[1] Id. at 12. When he opened a plastic bag lying on the ground, "a white powdery substance flew up in the air" and it smelled of ammonia. Id. at 14. He immediately notified HAZMAT and the fire department. Id. While looking for the reported "pink bubbly liquid," Officer Molody opened the door to the common area of the triplex and detected a strong odor of ammonia. Id. at 18. As a result, appellant's three children who resided in one of the apartments in the triplex were evacuated. Id. at 18-19. Because of the frigid weather, the children were placed in appellant's station wagon. Id. at 20. The three children all huddled in the front seat of the vehicle. Id. at 21. Officer Molody thought this unusual, so he examined the backseat and observed two Rubbermaid type containers. He testified his intention was to remove the containers so the children could sit in the backseat. Id. at 22. Officer Molody looked into one of the containers "to see what was in it to see how heavy it was when I pulled it out" as the containers were "[t]hree feet by two feet, two or three feet tall." Id. at 22-23. Upon opening the second container, he smelled ammonia. Id. at 22. He immediately removed the children from the vehicle. Id. at 24.

{¶11} Appellant had refused to give her consent to search the vehicle. Id. at 51. Detective Scott Griffith contacted Detective David Bair to secure a search warrant for the vehicle. Id. at 51-52. Detective Griffith made this decision and contact without knowing Officer Molody had already opened the containers. Id. at 52.

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[1]Based upon the complainant's description, a narcotics officer advised Officer Molody to look for ammonia, tubing, Sudafed tablets and coffee filters which were indicative of a methamphetamine lab. Id. at 8-9.

{¶12} In its judgment entry filed April 22, 2003, the trial court found "the Officer's actions were taken under exigent circumstances" as Officer Molody's opening of the containers was done to secure the safety of the children.

{¶13} We find it is clear from the record Officer Molody did not perceive any harm to the children in the vehicle until after he had opened the container and smelled the ammonia.

{¶14} We find exigent circumstances did not exist; however, the search is nonetheless valid under the inevitable discovery rule which states, "illegally obtained evidence is properly admitted in a trial court proceeding once it is established that the evidence would have been ultimately or inevitably discovered during the course of a lawful investigation." *State v. Perkins* (1985), 18 Ohio St.3d 193, 196. See, also, *Nix v. Williams* (1984), 467 U.S. 431.

{¶15} Detective Griffith had made an independent decision to acquire a search warrant for the vehicle and had contacted Detective Bair to obtain one. The vehicle would have qualified for a search warrant given the facts and circumstances surrounding the incident.[2]

{¶16} We find the items discovered in the containers in the backseat would have been found pursuant to the issuance of a search warrant. Upon review, we find the motion to suppress was properly denied.

{¶17} Assignment of Error I is denied.

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[2]Appellant, the owner of the vehicle, was inside a police cruiser. Id. at 15. She was a renter at the triplex and had been observed exiting the garage/shed where the "pink bubbly liquid" was brewing. Id. at 11.

II

{¶18} Appellant claims her conviction was against the manifest weight of the evidence. We disagree.

{¶19} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. On review for manifest weight, a reviewing court is to examine 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 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. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175. We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶20} Appellant argues the only evidence against her was an unrecorded statement by the co-defendant, Jeramie Heestand, which he later repudiated at trial.

{¶21} Appellant was convicted of aiding and abetting in the manufacture and production of a controlled substance, methamphetamines, in violation of R.C. 2923.03(A)(2) and R.C. 2925.04. Said sections state as follows, respectively:

{¶22} "A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

{¶23} "(2) Aid or abet another in committing the offense."

{¶24} "(A) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States food and drug administration, or the United States department of agriculture, unless one of the following applies***."

{¶25} Kevin Borchert, Special Agent with the Drug Enforcement Administration, was called to the scene. T. at 95, 98. Upon arrival, he noticed a strong chemical smell associated with a "Nazi meth lab." T. at 98-99. Upon entering Mr. Heestand's apartment in the triplex, he discovered a "hot lab" boiling in the hallway. T. at 99-100. He also discovered meth lab related items in the seemingly uninhabited apartment. T. at 99, 101-103, 140. Outside the garage/shed, police found remnants of items used in meth labs. T. at 103-106. The Rubbermaid type containers found in appellant's vehicle contained items used to make methamphetamine. T. at 107, 109-111. Appellant and Mr. Heestand were found exiting the garage/shed wherein the "pink bubbly liquid" and meth lab related items were found. T. at 120-121. Appellant was carrying a trash bag with meth lab related debris. T. at 121-122, 125. Mr. Heestand told Detective Bair appellant knew and helped in the manufacture of the methamphetamine and purchased needed items. T. at 146.

{¶26} Electricity to the garage/shed where the "pink bubbly liquid" was found was provided by an extension cord from appellant's apartment. T. at 161-162. Detective Griffith testified pursuant to his training and experience, methamphetamine was "cooked" in the garage/shed, and appellant's vehicle was a "rolling meth lab." T. at 165, 169.

{¶27} Mr. Heestand testified although appellant purchased items for the meth lab, he did not tell her their purpose. T. at 211. He originally offered to give her methamphetamine if she let him use the garage/shed for a meth lab, but she never gave him a "yes or no answer." T. at 212. Mr. Heestand lived in appellant's apartment although he rented the adjacent one wherein meth lab related items were discovered. T. at 215. Mr. Heestand denied his admissions to Detective Bair. T. at 216-221. Appellant denied knowing the use for the Sudafed tablets, and denied knowing Mr. Heestand was cooking methamphetamine in his apartment. T. at 227.

{¶28} The jury was left with deciding the credibility of the witnesses and chose to believe Detective Bair's version of Mr. Heestand's admissions. Also, the circumstantial evidence against appellant was sufficient. The direct evidence of the two containers filled with meth lab related items found in appellant's vehicle as the meth lab was being dismantled was boosted by the empty apartment she helped secure for Mr. Heestand while permitting him to live in her apartment. Further, the fact that the source of electricity to the garage/shed came from her apartment only substantiated the inference she aided and abetted the manufacture of the methamphetamine.

{¶29} Upon review, we find sufficient evidence to support the conviction, and no manifest miscarriage of justice.

{¶30} Assignment of Error II is denied.

{¶31} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.