[Cite as *State v. Loper*, 2009-Ohio-5920.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	Sheila G. Farmer, P.J.
	:	W. Scott Gwin, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 09-CA-0044
	:	
	:	
JENNIFER K. LOPER	:	O P I N I O N
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Criminal Appeal from Licking County Court of Common Pleas Case No. 08-CR-539
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 5, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
KENNETH W. OSWALT Licking County Prosecutor	ROBERT BANNERMAN P.O. Box 77466 Columbus, Ohio 43207-9998
BY: CHRISTOPHER A. REAMER Assistant Prosecuting Attorney 20 S. Second Street, Fourth Floor Newark, Ohio 43055	

Edwards, J.

{¶1} Appellant, Jennifer Loper, appeals a judgment of the Licking County Common Pleas Court convicting her of one count of Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs in violation of R.C. 2925.041(A). Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} Trevor Wolfe was employed as a probation officer for the Licking County Municipal Court in April, 2008. Two different probationers supervised by the department provided information that methamphetamine was being sold, manufactured and used in an apartment on Mill Street in Utica by a woman named Jennie. Probation officer Vanessa Stalnaker connected the two probationers and the name "Jennie" to appellant, knowing them to be associates. The probation department confirmed appellant's presence at the address on Mill St. by checking school records to confirm that her son was admitted to the public school and registered at that address. They further confirmed appellant's residence with the landlord. Appellant had not reported her address to Ms. Stalnaker, her probation officer, which is a violation of her probation terms.

{¶3} Trevor Wolfe reported the tip to the Central Ohio Drug Enforcement Task Force (CODE) and requested their assistance. CODE detectives conducted surveillance of the apartment. When they saw appellant enter the apartment, they called Probation Officer Wolfe. He drove to the apartment, knocked on the door and received no answer. He found the door to be unlocked and proceeded inside the

apartment. He immediately saw evidence of drug use as well as a lease indicating the apartment was rented to appellant.

{¶4} Appellant was charged with one count of Illegal Assembly or Possession of Chemicals for the Manufacture of Drugs in violation of R.C. 2925.041(A). She filed a motion to suppress. The court overruled the motion, finding that the state had a reasonable suspicion that she was in violation of her probation, allowing them to search the apartment under consent she gave under the terms of her probation. The court found that the probation officers contacted CODE due to concerns with handling the chemicals used in the production of methamphetamine.

{¶5} After the court overruled appellant's motion to suppress, appellant entered a plea of no contest and was convicted as charged. She was sentenced to three years incarceration, to be served consecutively to the sentence imposed in Case No. 08 CR 587, currently on appeal as 09 CA 0043. She assigns two errors:

{¶6} "I. THE TRIAL COURT ERRED IN FAILING TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS.

{¶7} "II. APPELLANT'S CONVICTION WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶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. See *State v. Fanning*

(1982), 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. 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. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141, overruled on other grounds. 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, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 620 N.E.2d 906; *Guysiner*, supra. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 517 U.S. 690, 116 S.Ct. 1657, 134 L.E2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶9} Appellant concedes that the Fourth Amendment protection against unreasonable searches and seizures is less stringent when applied to probationers if a warrantless search is conducted pursuant to a valid state regulation governing probationers. *Griffin v. Wisconsin* (1987), 483 U.S. 868. However, appellant argues that her consent to reasonable searches by her probation officer as a condition of her probation did not extend to consent to a warrantless search by law enforcement officers.

She further argues that it is not reasonable for her residence to be searched when she is not home.

{¶10} This Court addressed appellant's argument that her consent did not extend to a warrantless search by law enforcement officers in *State v. Carter* (June 28, 1993), Stark App. No. CA-9102, unreported. In *Carter*, a random urine analysis detected a controlled substance in the appellant's urine. The appellant's probation officer, who had reason to believe that the appellant was trafficking drugs from his home, contacted various law enforcement agencies to assist her in the search of the appellant's home. This Court concluded that the search was valid. Id. at 1. The search was not a pretextual search in which law enforcement officers lacked probable cause for the issuance of a warrant and requested a probation officer to be present during the search. Id. Instead, the probation officer decided to conduct a search of the premises based on the belief that appellant was violating his probation and sought the assistance of the police in performing the search. Id. The probation officer was present and actively participated in the search. Id.

{¶11} In the instant case, the probation officer had reason to believe appellant was in violation of her probation. The probation department received tips from two probationers that appellant was making and/or selling methamphetamine out of her apartment. She had not reported the address to her probation officer, in violation of the terms of her probation. Probation officers confirmed appellant's address through the school appellant's son attended and through her landlord. In addition, appellant had failed to show up for a urine drop, in violation of the terms of her probation. Trevor Wolfe had reasonable cause to believe appellant was in violation of her probation.

{¶12} Although the record does reflect that CODE detectives were conducting surveillance on appellant's apartment, the evidence at the suppression hearing does not reflect that this was a pretextual search wherein law enforcement officers lacked probable cause for issuance of a warrant and requested a probation officer to be present during the search. The information concerning drug usage and manufacture at the apartment came first to the attention of the probation officer, who notified law enforcement because a meth lab can be very dangerous, with a risk for explosion, and the location was in an apartment complex. Tr. 11-12. The probation officer entered the apartment through an unlocked door when he received no answer to his knock on the door. Tr. 12. When he found numerous items associated with the cooking of methamphetamine he stepped back because of the danger involved, and he was not trained to handle those items. Tr. 13. Trevor Wolfe testified that he entered the residence on the basis that appellant had signed terms of her probation giving probation officers the right to enter her residence if they felt a violation of probation has occurred or was about to occur, and she was in violation for failing to report a change in address and failing to show up for a urine drop at the time of the search. Tr. 13-14. The trial court specifically found, "The probation officers primarily contacted the CODE officers due to concerns with methamphetamine and CODE's superior training in dealing with the drugs and the chemicals used in this production." Judgment Entry, January 6, 2009.

{¶13} On the facts of this case, the court did not err in finding that the warrantless search of the apartment by the probation officer, accompanied by law enforcement officers trained to handle the chemicals and items used for the preparation of methamphetamine, was a valid search.

{¶14} Appellant cites no authority for her proposition that the search was unreasonable because she was not present at the time. The court specifically found based on Trevor Wolfe's testimony that he had received information from CODE officers that appellant had entered the apartment. When Officer Wolfe knocked on the door and received no answer, he entered the unlocked apartment. He testified at the suppression hearing that it was not unusual to approach a probationer's residence and for the probationer not to answer the door when he knocks. Upon entering the apartment, he immediately noted evidence of drug use. We reject appellant's argument that the search of her apartment in her absence was unreasonable. Appellant consented to allow probation officers to enter her residence if they had reasonable cause to believe a violation of her probation had occurred or was about to occur. The evidence reflected that appellant had committed two probation violations by failing to report a change in address and failing to report for a urine drop. The probation officer had reason to believe that appellant was also engaging in the sale or manufacture of drugs from her apartment. Based on the circumstances, we do not find that it was unreasonable for the probation officer to enter the unlocked apartment when appellant failed to answer his knock on the door. Upon entering, he immediately saw evidence of drug activity.

{¶15} The first assignment of error is overruled.

II

{¶16} In her second assignment of error, appellant argues that the judgment of conviction is against the manifest weight and sufficiency of the evidence.

{¶17} Appellant entered a plea of no contest to the charge. By entering a plea of no contest, appellant is precluded from raising a manifest weight claim on appeal. *State v. Gronbach* (July 1, 1999), Fairfield App. No. 98CA73, unreported at 2, citing *State v. Wells* (Feb. 16, 1999), Warren App. No. CA98-05-057, unreported, at 1. "By entering a plea of no contest, appellant has waived certain constitutional rights, including the right to have the state prove its case beyond a reasonable doubt." Id., citing *State v. Hale* (Nov. 15, 1993), Butler App. No. CA93-04-065, unreported, at 5. "The court can only weigh the evidence where the defendant has plead not guilty and evidence on both sides has been presented." *Wells* at 1, citing *State v. McGhee* (Jan. 18, 1995), Montgomery App. No. 14515, unreported, at 2.

{¶18} In order to obtain a conviction of a defendant who has pleaded no contest, the state must offer an explanation of the circumstances to support the charge. This explanation is sufficient if it supports all the essential elements of the offense. *Chagrin Falls v. Katelanos* (1988), 54 Ohio App.3d 157, 159, 561 N.E.2d 992, 994. A defendant who pleads no contest has a substantive right to be acquitted where the state's statement of facts fails to establish all of the elements of the offense. *Cuyahoga Falls v. Bowers* (1984), 9 Ohio St.3d 148, 150, 459 N.E.2d 532, 534-535; *State v. Gilbo* (1994), 96 Ohio App.3d 332, 337, 645 N.E.2d 69, 72.

{¶19} Appellant was convicted of R.C. 2925.041:

{¶20} "(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.

{¶21} "(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."

{¶22} The prosecutor provided the following explanation of circumstances:

{¶23} "MR. WALTZ: Yes, Your Honor. With respect to Case No. 08 CR 539, on or about April 29th, 2008, probation officers from the Licking County Municipal Court received reports involving two probationers under their supervision, one of them being the Defendant in this case, Ms. Loper. There were - - specifically these allegations involved the use and production of methamphetamine.

{¶24} "On that date the probation officers, along with officers from the Central Ohio Drug Enforcement Task Force, went to the Defendant's residence located at 221 Mill Street, apartment H, Utica, Licking County, Ohio in order to effectuate a questioning and search of the residence if necessary.

{¶25} "Officers knocked on the door and received no response. Checking the door knob to see if it was unlocked, officers then entered the residence.

{¶26} "Officers located multiple items used for the production of methamphetamine within the residence. Specifically officers located syringes, matches, professional glassware, iodine, Coleman fuel, acid and acetone. Also within the residence officers located a plastic tote containing hydrochloric acid gas, glassware, a

jar with unknown pills, red stained tubing, granulated charcoal and pieces of smaller tubing.

{¶27} "As a result, the Defendant did knowingly assemble or possess one or more chemicals that may be used to manufacture methamphetamine with the intent to manufacture methamphetamine. Accordingly, the Defendant is charged with one count of illegal assembly or possession of chemicals for the manufacture of drugs, in violation of Section 2925.04(1)(a) of the Ohio Revised Code. This is a felony of the third degree, carrying a possible prison term of up to five years and a maximum fine of up to $10,000. There is a mandatory minimum prison sentence on this offense of at least two years and a mandatory minimum fine of at least $5,000." Plea Hrg. Tr. 9-11.

{¶28} Appellant stated that she agreed with the facts as set forth by the state. Id. at 13. The explanation of circumstances was sufficient to support the conviction. The explanation established that items used for the manufacture of methamphetamine were found in appellant's residence, and that these items were possessed with the intent to manufacture methamphetamine.

{¶29} The second assignment of error is overruled.

{¶30} The judgment of the Licking County Common Pleas Court is affirmed.

By: Edwards, J.

Farmer, P.J. and

Gwin, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/W. Scott Gwin

JUDGES

JAE/r0820

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FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JENNIFER K. LOPER	:	
Defendant-Appellant	:	CASE NO. 09-CA-0044

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/Sheila G. Farmer

s/W. Scott Gwin

JUDGES