

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-VS-	:	
	:	Case No. 2014 AP 0038
TONYA L. HEADE	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Criminal appeal from the Tuscarawas County Court of Common Pleas, Case No.2013CR10 0220
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	June 17, 2015
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APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Gwin, P.J.

{¶1} Appellant Tonya Heade [“Heade”] appeals from her conviction and sentence after a jury trial in the Tuscarawas County Court of Common Pleas for count of Illegal Conveyance of Drugs onto the Grounds of a Detention Facility in violation of R.C. 2921.36(A) (2) and one count Possession of Drugs, Methamphetamine in violation of R.C. 2925.11(A).

Facts and Procedural History

{¶2} Officer Cheri Creager, of the Tuscarawas County Sheriff’s Office, testified that she was employed as a corrections officer at the Tuscarawas County Jail on August 16, 2013. Officer Creager testified that when individuals are first brought into the jail, they are patted down for contraband, but their body cavities are not searched. Inmates can be held in the booking area until processed and placed in a longer-term housing unit.

{¶3} According to Officer Creager, Heade was brought to the jail and placed in an individual cell as it was suspected she was under the influence of drugs or alcohol. (Tr. pg. 108) According to Officer Creager, her shift began at the jail at approximately 7:00 A.M. Officer Creager stated that Heade was alone in the detox cell and she would have likely been alone throughout the time in which she was being held in the cell.

{¶4} Around 12:00 P.M. Heade was prepared to appear by way of video conferencing for an issue before the New Philadelphia Municipal Court. To prepare her, Officer Creager had Heade change her clothing in a shower area. Officer Creager stated that this is an area in which property bags are kept as well as jail uniforms.

Officer Creager stated that there are two shower stalls and that she would have taken her back, as she is responsible for overseeing the female inmates.

{¶5} Officer Creager testified that she took Heade from her holding cell via a short walk past the booking counter into the shower area. It is in the shower area that Heade undressed in front of Officer Creager. Prior to actually taking Heade into the shower area, Office Creager stated that she had gone into the shower area to make sure that any soap or shampoo that was left there had been discarded. Officer Creager testified that she checks to make sure that there is nothing left from a previous inmate who may have changed her clothing in the area. Officer Creager testified that she searches to make sure that there is nothing left on the floor from another officer or inmate. Officer Creager walked through the shower area, checked both showers, flushed the toilet, and then left and returned to Heade. Officer Creager then took Heade to the shower area.

{¶6} Heade had to prepare quickly for her court appearance; she did not shower, and was simply dressed in a jail uniform. Officer Creager testified that she took Heade back to the area and asked her to undress out of her civilian clothing and have them placed in a property bag. Heade was not wearing underwear. Heade complied with the officer's request. While Heade was getting dressed into her jail uniform, Heade began talking about problems with her landlord. Heade was concerned that he was, "poisoning her with a red substance that was all over her trailer." Heade continued to talk about the red substance while she was getting dressed. During this time, Officer Creager noticed a piece of paper under Heade's foot. Officer Creager instructed Heade

to finish getting dressed but to not touch the piece of paper. Officer Creager testified that it appeared to her that Heade was attempting to cover the paper with her foot.

{¶7} After putting on a pair of gloves, Officer Creager picked up the paper off the floor and asked Heade about the paper. Heade was very concerned about her safety because she thought that the red substance from her trailer was also on the paper. Officer Creager opened up the folded piece of paper and observed a white powdery substance. Heade denied knowing what the powdery substance was, but did not deny that the paper itself was hers. Officer Creager described the piece of paper as being damp and that it had a particular odor she associated with the feminine genital area. Officer Creager stated that the floor was not wet, and the shower had not been recently used.

{¶8} The paper and substance was gathered as evidence and then sent to BCI & I for analysis where it tested positive for methamphetamine. Sergeant Douglas Burlier of the Tuscarawas County Sheriff's Department testified that he sent the white substance found by Officer Creager to BCI & I for testing. He admitted that the form BCI & I used to log the evidence did not indicate that a paper wrapper was included in the evidence submitted to the agency. However, he indicated that occasionally BCI & I would slightly alter the language of the items they received.

{¶9} Officer Creager did not collect or submit Head's clothing from the jail for testing or analysis. Officer Creager did not see or hear the piece of paper fall from Heade's person. She did not do a physical inspection of Heade after witnessing the paper on the floor.

Assignment of Error

{¶10} Heade raises one assignment of error,

{¶11} “I. THE APPELLANT'S CONVICTION FOR ILLEGAL CONVEYANCE WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.”

Analysis

{¶12} In her sole assignment of error, Heade challenges the sufficiency of the evidence; she further contends her conviction is against the manifest weight of the evidence produced by the state at trial.

{¶13} Our review of the constitutional sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), which requires a court of appeals to determine whether “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.*; see also *McDaniel v. Brown*, 558 U.S. 120, 130 S.Ct. 665, 673, 175 L.Ed.2d 582(2010) (reaffirming this standard); *State v. Fry*, 125 Ohio St.3d 163, 926 N.E.2d 1239, 2010–Ohio–1017, ¶146; *State v. Clay*, 187 Ohio App.3d 633, 933 N.E.2d 296, 2010–Ohio–2720, ¶68.

{¶14} Weight of the evidence addresses the evidence's effect of inducing belief. *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997), *superseded by constitutional amendment on other grounds as stated by State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668, 1997-Ohio–355. Weight of the evidence concerns “the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party

having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue, which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.” (Emphasis sic.) Id. at 387, 678 N.E.2d 541, *quoting* Black's Law Dictionary (6th Ed. 1990) at 1594.

{¶15} When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the fact finder’s resolution of the conflicting testimony. Id. at 387, 678 N.E.2d 541, *quoting Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). However, an appellate court may not merely substitute its view for that of the jury, but must find that “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. Thompkins, supra*, 78 Ohio St.3d at 387, *quoting State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720–721 (1st Dist. 1983). Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” Id.

“[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts.

* * *

“If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with

the verdict and judgment, most favorable to sustaining the verdict and judgment.”

Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting* 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶16} Heade challenges only her conviction for the illegal conveyance of a prohibited item onto the grounds of a detention facility. Heade contends that the evidence fails to establish that she “knowingly” transported the drugs into the jail. In order for Heade to be found guilty of illegal conveyance of a prohibited item onto the grounds of a detention facility, the trier of fact would have to find beyond a reasonable doubt that Heade knowingly conveyed, or attempt to convey, onto the grounds of a detention facility any drug of abuse, as defined in Section 3719.011 of the Revised Code.

A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

R.C. 2901.22(B).

{¶17} “Whether a person acts knowingly can only be determined, absent a defendant's admission, from all the surrounding facts and circumstances, including the

doing of the act itself.” *State v. Johnson*, 56 Ohio St.3d 35, 38,381 N.E.2d 637(1978) citing *State v. Huffman*, 131 Ohio St. 27, 1 N.E.2d 313(1936); *State v. Rojas*, 64 Ohio St.3d 131, 139, 592 N.E.2d 1376(1992); *State v. Huff*, 145 Ohio App.3d 555, 563, 763 N.E.2d 695(1st Dist. 2001). (Footnote omitted.) Thus, “[t]he test for whether a defendant acted knowingly is a subjective one, but it is decided on objective criteria.” *Id.* citing *State v. Adams*, 4th Dist. Ross No. 94 CA 2041, 1995 WL 360247(June 8, 1995) and *State v. Paidousis*, 10th Dist. Franklin No. 00AP-118, 2001 WL 436079 (May 1, 2001). See also, *State v. Butler*, 5th Dist. Holmes No. 2012-CA-7, 2012-Ohio-5030, ¶25.

{¶18} In the case at bar, evidence was presented that Heade was placed in an individual holding cell with no other prisoners, and that she did not at any time leave that cell without being accompanied by a corrections officer. The area in which the methamphetamine was found was inspected prior to Heade’s presence in the area. The evidence also pointed to the methamphetamine appearing as Heade changed her clothing. Heade was not wearing underwear. Further, testimony was presented that the methamphetamine was secreted into the facility, as there was evidence that the methamphetamine was held by Heade in her vaginal area.

{¶19} If the state relies on circumstantial evidence to prove an essential element of an offense, it is not necessary for “such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction.” *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E. 2d 492(1991), paragraph one of the syllabus, superseded by State constitutional amendment on other grounds as stated in *State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668(1997). “Circumstantial evidence and direct evidence inherently possess the same probative value [.]” *Jenks*, 61 Ohio St.3d at

paragraph one of the syllabus. Furthermore, “[s]ince circumstantial evidence and direct evidence are indistinguishable so far as the jury's fact-finding function is concerned, all that is required of the jury is that i[t] weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt.” *Jenks*, 61 Ohio St.3d at 272, 574 N.E. 2d 492. While inferences cannot be based on inferences, a number of conclusions can result from the same set of facts. *State v. Lott*, 51 Ohio St.3d 160, 168, 555 N.E.2d 293(1990), *citing Hurt v. Charles J. Rogers Transp. Co.*, 164 Ohio St. 329, 331, 130 N.E.2d 820(1955). Moreover, a series of facts and circumstances can be employed by a jury as the basis for its ultimate conclusions in a case. *Lott*, 51 Ohio St.3d at 168, 555 N.E.2d 293, *citing Hurt*, 164 Ohio St. at 331, 130 N.E.2d 820.

{¶20} Viewing the evidence in a light most favorable to the prosecution, we conclude that a reasonable person could have found beyond a reasonable doubt that Heade committed the crimes. We hold, therefore, that the state met its burden of production regarding each element of the crime of prohibited conveyance in violation of R.C. 2921.36(A)(2) and, Possession of Drugs, Methamphetamine in violation of R.C. 2925.11(A) and, accordingly, there was sufficient evidence to support Heade’s convictions.

{¶21} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence, upon which the fact finder could base his or her judgment. *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA–5758, 1982 WL 2911(Feb. 10, 1982). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the

manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction*, 54 Ohio St.2d 279, 376 N.E.2d 578(1978). The Ohio Supreme Court has emphasized: “[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *.” *Eastley v. Volkman*, 132 Ohio St.3d 328, 334, 972 N.E. 2d 517, 2012-Ohio-2179, *quoting Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, *quoting* 5 Ohio Jurisprudence 3d, Appellate Review, Section 603, at 191–192 (1978). Furthermore, it is well established that the trial court is in the best position to determine the credibility of witnesses. *See, e.g., In re Brown*, 9th Dist. Summit No. 21004, 2002–Ohio–3405, ¶ 9, *citing State v. DeHass*, 10 Ohio St .2d 230, 227 N.E.2d 212(1967).

{¶22} Ultimately, “the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact ‘unless it is patently apparent that the fact finder lost its way.’” *State v. Pallai*, 7th Dist. Mahoning No. 07 MA 198, 2008-Ohio-6635, ¶31, *quoting State v. Woullard*, 158 Ohio App.3d 31, 2004-Ohio-3395, 813 N.E.2d 964 (2nd Dist. 2004), ¶ 81. In other words, “[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe.” *State v. Dyke*, 7th Dist. Mahoning No. 99 CA 149, 2002-Ohio-1152, at ¶ 13, *citing State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125(7th Dist. 1999).

{¶23} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d

212(1967), paragraph one of the syllabus; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶118. *Accord*, *Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942); *Marshall v. Lonberger*, 459 U.S. 422, 434, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983).

{¶24} The jury as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witness's credibility. "While the jury may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Craig*, 10th Dist. Franklin No. 99AP-739, 1999 WL 29752 (Mar 23, 2000) *citing State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 WL 284714 (May 28, 1996). Indeed, the jury need not believe all of a witness' testimony, but may accept only portions of it as true. *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶21, *citing State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964); *State v. Burke*, 10th Dist. Franklin No. 02AP-1238, 2003-Ohio-2889, *citing State v. Caldwell*, 79 Ohio App.3d 667, 607 N.E.2d 1096 (4th Dist. 1992). Although the evidence may have been circumstantial, we note that circumstantial evidence has the same probative value as direct evidence. *State v. Jenks, supra*.

{¶25} We find that this is not an "exceptional case in which the evidence weighs heavily against the conviction." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, *quoting Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. The jury neither lost his way nor created a miscarriage of justice in convicting Heade of the charges.

{¶26} Based upon the foregoing and the entire record in this matter, we find Head's conviction was not against the sufficiency or the manifest weight of the

evidence. To the contrary, the jury appears to have fairly and impartially decided the matters before them. The jury as a trier of fact can reach different conclusions concerning the credibility of the testimony of the state's witnesses and Heade. This court will not disturb the jury's finding so long as competent evidence was present to support it. *State v. Walker*, 55 Ohio St.2d 208, 378 N.E.2d 1049 (1978). The jury heard the witnesses, evaluated the evidence, and was convinced of Heade's guilt.

{¶27} Finally, upon careful consideration of the record in its entirety, we find that there is substantial evidence presented which if believed, proves all the elements of the crimes beyond a reasonable doubt.

{¶28} Heade's sole assignment of error is overruled.

{¶29} For the foregoing reasons, the judgment of the Court of Common Pleas, Tuscarawas County, Ohio is affirmed.

By Gwin, P.J.,

Farmer, J., and

Delaney, J., concur