

COURT OF APPEALS  
PERRY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellant	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	Case No. 14-CA-00026
LOUISE F. SPINKS	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Criminal appeal from the Perry County Court of Common Pleas, Case No.13-CR- 0072
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	July 10, 2015
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APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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*Gwin, P.J.*

{¶1} Defendant-appellant Louise F. Spinks [“Spinks”] appeals her convictions and sentences after a jury trial in the Perry County Court of Common Pleas for Complicity to Illegal Manufacture of Drugs, a felony of the second degree in violation of R.C. 2923.03 and R.C. 2925.04; Complicity to Illegal Assembly or Possession of Chemicals for the Manufacturing of Drugs, a felony of the third degree in violation of R.C. 2921.03 and R.C. 2925.041; and Aggravated Possession of Drugs, a felony of the fifth degree in violation of R.C. 2925.11.

*Facts and Procedural History*

{¶2} Detective Kevin Starrett of the Perry County Sherriff’s Office was assigned to the Central Ohio Drug Task Force. In May 2013, Detective Starrett received information from a confidential informant that methamphetamine was being produced at Spinks' house outside of Lexington on Township Road 195. Spinks lived at this address with her boyfriend, Luke Herda. The source informed Detective Starrett that Patrick Chambers and Kyle Wickham were also involved in the activity.

{¶3} Upon investigation, Detective Starrett identified ten purchases of pseudoephedrine, commonly known as “Sudafed” by Spinks from January 1, 2013 to April 1 2013. Wickham likewise had numerous pseudoephedrine purchases. After being informed by the confidential informant that a “cook” had recently taken place at the residence, Detective Starrett decided to question Spinks at her home.

{¶4} On May 3, 2013, Detectives Starrett and Cline of the Perry County Sherriff’s Office went to the home. While the Detectives were inside Spinks’ home she pointed out a suitcase located in one of the bedrooms of the residence. Spinks told the

officers that Patrick Chambers had left it in the room. Patrick Chambers spent time at the residence helping with the property. Both he and his son, Kyle Wickham, would sometimes spend the night at the property. Kyle Wickham was later convicted of a charge relating to the manufacture of methamphetamines. Detective Starrett found that the items in the suitcase were consistent with a one-pot methamphetamine lab. After this discovery, Detective Starrett obtained a warrant to search the property and proceeded to open the suitcase in question. Inside he found items that are commonly used to produce methamphetamine, including a two-liter bottle, which contained a solid substance that tested positive for methamphetamine. Spinks explained to Detective Starrett that others had left the suitcase at the property and that she had collected items in the bedroom and placed them inside the suitcase.

{¶5} While being questioned at the home, Spinks admitted to the Sheriff's detectives that the suitcase she pointed out contained "lab supplies." She told the officers that she collected the supplies and placed them in the suitcase. (State's Exhibit 25). Spinks' fingerprints were on some of the supplies. Inside Spinks' purse, the officers discovered a vial containing a white powder that was found to be methamphetamine, a schedule II controlled substance. Spinks further admitted to Detective Starrett that she purchased pseudoephedrine to give to Kyle Wickham.

{¶6} In a second interview conducted at the Sherriff's Office, Spinks denied buying Sudafed for Wickham. Instead, she claimed that she bought it for her husband who suffers from Parkinson disease. (State's Exhibit 26). She further denied knowing that Wickham was producing methamphetamine or that she had any knowledge of Wickham's activities.

{¶7} The state presented testimony from two local pharmacists who identified Spinks as an individual who made numerous purchases of pseudoephedrine, or “Sudafed,” the chemical precursor necessary for the production of methamphetamine.

{¶8} Spinks testified on her own behalf. Spinks claimed that she was very intoxicated when she made her first statement to Detective Starrett. She admitted cleaning up the supplies and putting them in the suitcase. She denied that she had ever given Sudafed to Wickham. She claimed that she purchased the Sudafed for her husband and would stock up if the medicine was on sale to save money. Wickham refused to testify at trial.

{¶9} Lisa DeGarmo, Spinks’ niece testified that she never observed drug activity at Spinks’ home. She further corroborated that Spinks’ husband did take Sudafed on the advice of his doctors.

{¶10} At the conclusion of the trial, the jury found Spinks guilty of all three charges. A sentencing hearing took place on August 27, 2014. The trial court sentenced Spinks to three years in prison on the charge of Complicity to Illegal Manufacture of Drugs, nine months in prison on the charge of Complicity to Illegal Assembly or Possession of Chemicals for the Manufacturing of Drugs, and six months in prison on the charge of Aggravated Possession of Drugs. The trial court ruled that the sentences would be served concurrently.

#### *Assignments of Error*

{¶11} Spinks raises two assignments of error,

{¶12} “I. THE TRIAL COURT ERRED WHEN IT ENTERED A JUDGMENT AGAINST THE APPELLANT WHEN THE JUDGMENT WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶13} “II. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE DEFENDANT’S MOTION FOR ACQUITTAL AS THE GUILTY VERDICTS AT THE TRIAL COURT WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE.”

I & II

{¶14} In her first assignment of error, Spinks contends her convictions are against the manifest weight of the evidence produced by the state at trial. In her second assignment of error, Spinks challenges the sufficiency of the evidence.

{¶15} Spinks’ first and second assignments of error raise common and interrelated issues; therefore, we will address the arguments together.

{¶16} 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 (5th Dist.), ¶68.

{¶17} 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.

{¶18} 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).

{¶19} R.C. 2923.03 provides:

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

\* \* \*

(2) Aid or abet another in committing the offense.

{¶20} To find Spinks guilty of Complicity to Illegal Manufacture of Drugs, the jury would have to find beyond a reasonable doubt that Spinks knowingly aided or abetted in the manufacture or otherwise engage in any part of the production of a controlled substance. R.C. 2925.04(A).

{¶21} To find Spinks guilty of Complicity to Assembly or possession of chemicals used to manufacture controlled substance with intent to manufacture controlled substance in violation of R.C. 2925.041, the jury would have to find beyond a reasonable doubt, that Spinks knowingly aided or abetted another in assembling or possessing 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. R.C. 2925.041 further provides,

(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} To find Spinks guilty of Aggravated Possession of Drugs, the jury would have to find beyond a reasonable doubt, that Spinks knowingly obtained, possessed or used a Schedule II controlled substance or a Schedule II controlled substance analog. R.C. 2925.11. (A); R.C. 2925.11 (C)(1)(a).

{¶23} In the case at bar, the testimony established that the Spinks made numerous purchases of the chemical precursor, Sudafed, used to make methamphetamine. The evidence further established that Spinks knew that the materials used in the process of making methamphetamine were in her own home and that she did in fact handle those items. The evidence at trial further established that Spinks knowingly possessed the finished product methamphetamine, a schedule II controlled substance found in a vial inside her purse.

{¶24} In the case at bar, Spinks relies upon the fact that she had purchased Sudafed for her husband and the purchase, in and of itself is not illegal. Further,



numerous individuals were at Spinks' home who could had access to the items found in her home.

{¶25} 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.

{¶26} 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 Spinks committed the crimes of Complicity to Illegal Manufacture of Drugs, Complicity to Assembly or possession of chemicals used to manufacture controlled substance with

intent to manufacture controlled substance, and Aggravated Possession of Drugs. We hold, therefore, that the state met its burden of production regarding each element of the crimes of Illegal Manufacture of Drugs, Complicity to Assembly or possession of chemicals used to manufacture controlled substance with intent to manufacture controlled substance, and Aggravated Possession of Drugs, and, accordingly, there was sufficient evidence to support Spinks' convictions.

{¶27} 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. No. 21004, 2002–Ohio–3405, ¶ 9, *citing State v. DeHass*, 10 Ohio St .2d 230, 227 N.E.2d 212 (1967).

{¶28} 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).

{¶29} 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).

{¶30} Although Spinks presented evidence, and cross-examined the witnesses to show that she legally purchased Sudafed, and did not know others were making drugs in her home, 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*.

{¶31} 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 Spinks of the charges.

{¶32} Based upon the foregoing and the entire record in this matter, we find Spinks' convictions were 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 Spinks and her witnesses. 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 Spinks' guilt.

{¶33} 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.

{¶34} Spinks' first and second assignment of error are overruled.

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

By Gwin, P.J.,

Farmer, J., and

Baldwin, J., concur