[Cite as *State v. Strait,* 2015-Ohio-4264.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
LISA STRAIT	:	Case No. 14 CAA 12 0081
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 14-CR-I-04-151
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	October 12, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
CAROL HAMILTON O'BRIEN BRIAN J. WALTER 140 North Sandusky Street Delaware, OH 43015	TODD A. WORKMAN P.O. Box 687 Delaware, OH 43015

Farmer, P.J.

{¶1} On April 11, 2014, the Delaware County Grand Jury indicted appellant, Lisa Strait, on seven counts of deception to obtain a dangerous drug in violation of R.C. 2925.22. Said charges arose from appellant receiving pain medications from two different physicians.

{¶2} A jury trial commenced on September 30, 2014. The jury found appellant guilty of six of the counts. By judgment entry filed November 18, 2014, the trial court sentenced appellant to five years of community control.

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

I

{¶4} "THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO OHIO RULES OF CRIMINAL PROCEDURE RULE 29 WHEN THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT.

II

{¶5} "THE DEFENDANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

III

{¶6} "THE TRIAL COURT ERRED WHEN IT GRANTED THE STATE'S MOTION IN LIMINE PRECLUDING ANY TESTIMONY OR QUESTIONING REAGARDING THE OHIO AUTOMATED RX REPORTING SYSTEM."

I, II

{¶7} Appellant claims the trial court erred in denying her Crim.R. 29 motion for acquittal and the guilty findings were against the manifest weight of the evidence. We disagree.

{¶8} Crim.R. 29 governs motion for acquittal. Subsection (A) states the following:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶9} The standard to be employed by a trial court in determining a Crim.R. 29 motion is set out in *State v. Bridgeman,* 55 Ohio St.2d 261 (1978), syllabus: "Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt."

{¶10} 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,* 20 Ohio App.3d 172, 175 (1st Dist.1983). 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.

{¶11} Appellant was convicted of six counts of deception to obtain a dangerous drug in violation of R.C. 2925.22(A) which states: "No person, by deception, shall procure the administration of, a prescription for, or the dispensing of, a dangerous drug or shall possess an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug." R.C. 2913.01(A) defines "deception" as:

> [K]nowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

{¶12} Appellant argues there is insufficient proof or no proof that she used deception to obtain a dangerous drug because she informed each of her treating physicians of each other and they did not inquire any further. In support of her argument, appellant relies on the case of *State v. Schaufele,* 9th Dist. Medina No. 10CA0137-M, 2012-Ohio-642. We note as a rule, these kind of cases are very fact specific. In *Schaufele* at ¶ 12*,* our brethren from the Ninth District, under the facts

presented, found the defendant did not deceive anyone because "there was no evidence presented that Ms. Schaufele was faced with an opportunity to disclose information and decided not to do so."

{¶13} In the case sub juduce, appellant's activity was brought to the attention of law enforcement when, on two separate occasions (December 19, 2013 and January 12, 2014), she reported a theft of her pain medication. T. at 148, 183. During the first report, she stated her son stole her prescription of Alprazolam, but then gave it back to her when confronted. T. at 149-151. The investigating officer observed numerous prescription bottles and over-the-counter drugs on appellant's dresser, nightstand, and floor. T. at 152-153. Appellant told the officer she "needed a police report so she could get her prescription refilled." T. at 153.

{¶14} During the second report, appellant stated her children had stolen her prescription for Percocet. T. at 183-184. At first she blamed her son again, but then retracted that allegation and shifted her suspicions to her daughter and the daughter's boyfriend. T. at 184-185. Appellant told the officer she wanted a police report so she could get her prescription replaced. T. at 187.

{¶15} Appellant's appearance before the police officers led them to believe she was under the influence of a drug or drugs. T. at 149, 154, 185, 188-189. With these two incidents, an investigated ensued and appellant's prescription history from two different physicians was discovered. State's Exhibits 1-8. A spreadsheet of appellant's history was presented to the jury. State's Exhibit 10. The spreadsheet included "the date the prescriptions were prescribed, the date they were filled, the quantity, and then how many days the prescription was to last for." T. at 155. The prescriptions were

stipulated to by appellant and were from three different pharmacies (CVS, Kroger, and Walgreens). T. at 143-144, 155. The testimony from the officer who created the spreadsheet, Delaware Police Officer Jonathan Weirich, and State's Exhibit 10 established pain relievers were prescribed by each doctor and the amount, time, and date of the prescriptions overlapped. T. at 158-161.

{¶16} Both physicians testified. On October 31, 2013, appellant saw Robert Gnade, M.D. Dr. Gnade noted that appellant's medication history indicated she was "someone on very, very high doses of medications." T. at 204. He prescribed appellant a thirty day supply of Oxycontin. T. at 213; State's Exhibit 1. He lowered appellant's dosage from 30 milligrams to 10 milligrams and from four times a day to twice a day. T. at 212. His clear intent was to cut back on appellant's dosage. T. at 213. He testified that although he did not recall his precise words to appellant, he informed her that she could not obtain the drugs he was prescribing to her or "anything like these drugs" from any other physicians and if she did, "she had the responsibility of letting me know if that was happening." T. at 209.

{¶17} On November 4, 2013, appellant received a 40-pill prescription or a five day supply if taken as prescribed for Percocet (a combination of Oxycodone and acetaminophen) from David Hoang, M.D. following a tendon transfer surgery. T. at 291, 292-293, 297; State's Exhibit 2. Dr. Hoang was unaware of appellant's prescription from Dr. Gnade. T. at 295. On November 12, 2013, Dr. Hoang prescribed appellant another 40 pills or a six day supply of Percocet at her request for additional pain medication. T. at 296-298; State's Exhibit 3. On November 20, 2013, Dr. Hoang prescribed appellant another 40 pills or a ten day supply of Percocet at her request. T.

at 298-299; State's Exhibit 4. Dr. Hoang was unaware of Dr. Gnade's prescription and would not have prescribed pain relievers to appellant if he had known about it because Dr. Gnade's prescription "should have been able to treat the - - symptoms of pain that I was treating her for." T. at 299-300. Dr. Hoang was aware that Dr. Gnade was appellant's primary care physician, but was not aware that he had prescribed any pain medication to her. T. at 303.

{¶18} On November 26, 2013, appellant went back to Dr. Gnade for another thirty day supply of Oxycontin. T. at 222-223; State's Exhibit 5. Appellant did not tell Dr. Gnade that Dr. Hoang had also prescribed her pain medication or that she was taking other prescription pain relievers. T. at 227-229. Dr. Gnade was consistently under the impression that he was the only one prescribing a pain reliever to appellant. T. at 228, 232. Dr. Gnade was not aware of the overlapping prescriptions from himself and Dr. Hoang, and he "probably would not have given her Oxycontin that day if she was taking Percocet." T. at 228-229.

{¶19} On December 2, 2013, Dr. Hoang gave appellant another 40-pill prescription or a six day supply if taken as prescribed for Percocet at her request. T. at 304-305; State's Exhibit 6. On December 10, 2013, Dr. Hoang prescribed appellant another 40 pills or a ten day supply of Percocet. T. at 305; State's Exhibit 7. Again, he was unaware of Dr. Gnade's prescription. T. at 306-307. Again, he would not have prescribed the pain reliever because Dr. Gnade's prescription "should have been adequate to control the pain that she was having." T. at 307.

{¶20} On December 17, 2013, appellant received a thirty day supply of Hydrocodone from Dr. Gnade. T. at 234; State's Exhibit 8. Again, appellant did not

indicate that she was taking any other prescription pain relievers from anyone else. T. at 234, 240, 253-254. Dr. Gnade testified he would not have prescribed the Hydrocodone if he was aware of an overlap of prescriptions. T. at 240-242. State's Exhibit 10 clearly demonstrated an overlap. T. at 241, 306-307.

{¶21} Upon review, we find sufficient credible evidence to support the denial of the Crim.R. 29 motion and to support the convictions. Although appellant purports a "don't ask, don't tell" defense, the evidence established appellant engaged in a pattern of deception with both physicians, claiming a need for additional pain relievers and increased dosages and by taking advantage of her surgery to obtain more drugs. We do not find any manifest miscarriage of justice.

{¶22} Assignments of Error I and II are denied.

III

{¶23} Appellant claims the trial court erred in granting the state's motion in limine regarding the Ohio Automated RX Reporting System or "OARRS," a prescription drug database. We disagree.

{¶24} "A motion in limine is a motion directed to the inherent discretion of the trial court judge to prevent the injection of prejudicial, irrelevant, inadmissible matters into trial." *Mason v. Swartz,* 76 Ohio App.3d 43, 55 (1991). The granting or denying a motion in limine are reviewed under an abuse of discretion standard of review. *Estate of Johnson v. Randall Smith, Inc.,* 135 Ohio St.3d 440, 2013-Ohio-1507. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore,* 5 Ohio St.3d 217 (1983).

{¶25} Appellant argues the officers in this case used the OARRS report in their initial investigation and could have testified sufficiently to meet the requirements of Evid.R. 901 for authentication and/or identification.

{¶26} Prior to commencing the jury trial, the parties argued the admissibility and relevancy of the OARRS report, an individual's prescription history. T. at 11-18. The state argued the report was not a public record and was typically incomplete, could contain mistakes, was possibly prejudicial, and was not relevant given appellant's stipulation of the prescriptions she had received. Appellant argued she should be able to question the physicians on the OARRS report, as it was their burden to verify her truthfulness regarding her current medications. Appellant argued the physicians had the ability and burden to stop her from unlawfully receiving the prescriptions. The state countered that appellant's arguments shifted the burden to the physicians i.e., "the doctor should have checked this so that the Defendant wouldn't have been able to commit a crime." T. at 18. Following argument, the trial court found the following (T. at 18-19):

> THE COURT: All right. Let me just comment for the record, I have reviewed 4729.79 which you provided a copy to the Court and referenced in your argument. I might note that 4729.79(D) provides if the Board becomes aware of a prescriber's failure to comply with this section, which you're evidently alleging they failed to comply with it, the Board shall notify the government entity responsible for licensing the prescriber.

> So seems to me that even if they didn't, we're not - - they don't notify the Court here, we don't handle it in a criminal prosecution, they notify the State Medical Board and the State Medical Board takes any action they deem appropriate if they, in fact, find that they have failed to do that.
>
> So based upon that and the other information that is set forth in Chapter 4729, I am going to sustain the State's Motion In Limine and we're not going to have any cross-examination of the doctors on or any bringing up of this - - of this particular database.

{¶27} Officer Weirich testified relative to the stipulated exhibits which included the eight prescriptions received and personally filled by appellant. T. at 154-155; State's Exhibits 1-9. Both physicians testified and were cross-examined as to their interaction with appellant and what they prescribed for her without any knowledge of each other's prescriptions. We note the record does not contain a proffer of the report.

{¶28} Upon review, we do not find any abuse of discretion by the trial court in granting the motion in limine.

{¶29} Assignment of Error III is denied.

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

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

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