[Cite as *State v. Jeter*, 2004-Ohio-1332.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio — Court of Appeals No. E-02-047

Appellee — Trial Court No. 99-CR-080

v.

Rodgess B. L. Jeter — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: March 19, 2004

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Kreig J. Brusnahan, for appellant.

* * * * *

LANZINGER, J.

{¶1} Appellant, Rodgess Jeter, appeals his conviction by the Erie County Court of Common Pleas for trafficking in heroin. Because Jeter waived appeal on his Crim.R. 29 motion for acquittal and there was sufficient evidence of an "offer to sell heroin," we affirm.

{¶2} Jeter was indicted by the Erie County Grand Jury on February 11, 1999 for trafficking in heroin within the vicinity of a school premise, a violation of R.C. 2925.03(A)(1) and (C)(6)(e). The charge stemmed from an undercover drug buy. A jury

trial commenced on October 16, 2002. The parties stipulated that the event occurred within 1,000 feet of a school premise.

{¶3} The state presented evidence through three police detectives, Detective Majoy of the Erie County Drug Task Force, Detective Terry Graham of the Huron Police Division and Detective Jeff Chandler of the city of Vermilion Police Department. Detective Graham learned that a confidential informant named Doc had arranged a heroin buy for November 21, 1998. The deal was set up through Doc's friend, Bruce Cote. Both Cote and Doc were known heroin users. While Doc, himself, did not know the seller, he knew that the seller was supposed to be from Cleveland, Ohio, a place he knew to be a source of heroin. Graham asked Majoy to conduct the undercover buy.

{¶4} At the arranged location, a residence on Hayes Avenue in Sandusky, Doc and Majoy created a cover story. Majoy posed as a "runner" or middleman who takes drugs from the seller and delivers them to the buyer. Majoy testified that when Jeter arrived, he asked Majoy if he wanted a "whole" or a "half" but did not show him the heroin. Majoy acted uncomfortable about the fact that Jeter had to go get the heroin, and Jeter said something to the effect of, "I ain't going nowhere, you know what I'm saying? Buck stops on my buck. More down the line, know what I'm saying?" At some point, Jeter pointed to a gray car and told Majoy that was his seller, telling him, "If you don't like it, I'm straight." After several minutes, Majoy gave Jeter $800. Jeter left on foot without counting the money. Majoy stayed near the house waiting for Jeter to return with the heroin.

{¶5} In the meantime, Detectives Graham and Chandler were in unmarked vehicles outside, waiting to provide assistance for Majoy. While waiting, they noticed a gray car circling the vicinity. Chandler testified that he remembered the car circling at least four times. Graham testified that he knew someone else was involved because he heard over the wire Majoy was wearing that Jeter kept saying, "My dude's outside." Graham also testified that Jeter stated, "My dude won't stop because you're with me. You got to get away from me so my dude will stop."

{¶6} Graham and Chandler testified that when Jeter left with the money, they watched Jeter walk for several blocks, but then lost sight of him. Shortly after, a very nervous person appeared in the vicinity. While they knew this person was not Jeter, they followed him because he looked suspicious. He went into an alley where they saw the gray car that Jeter had identified earlier as his seller's car. The two detectives followed the gray car until it sped through a red light. At that point, they believed their cover was blown and returned to pick up Majoy. At the Sandusky Police Department, Majoy identified Jeter from mug books as the person involved in the unconcluded drug deal.

{¶7} During trial, a tape from the wire Majoy was wearing during his conversation with Jeter was played. Detective Majoy clarified certain terms for the jury. He testified that a "whole" or a "half" refers to a whole or half ounce of heroin. He testified that, "more down the line" means that there is more money to be made by transactions between the two of them later. "I'm straight" means that everything's okay, I'm going to do my part and you do yours. Majoy also testified that at the time of the deal, a whole ounce of heroin would cost between $800 and $1,200. By giving Jeter

$800, Majoy was stating that he wanted a whole ounce. Majoy testified that as Jeter told him that his seller wanted to count the money, it was not unusual for Jeter to leave without counting it.

{¶8} At the close of the state's case, Jeter made a Crim.R. 29 motion for acquittal. The trial court denied the motion. Jeter then testified on his own behalf. He indicated that he knew Cote and Doc. He stated that it was his understanding that Doc wanted morphine. At the time, he was broke, so he decided to go to Doc's and steal the money. Once he got the money, he simply walked home. He denied ever discussing heroin with Doc, only morphine. He also testified that "heroin" was never mentioned when he talked with Majoy. During cross-examination, Jeter stated at one point that Doc thought he was going to get heroin and then changed his answer to morphine. He insisted he was not at the predetermined location to sell anything, but would not explain what he meant when he asked Doc and Majoy if they wanted a whole or half. Following his testimony and the close of all the evidence, Jeter failed to renew his Crim.R. 29 motion. The jury found Jeter guilty of the charge, and he was sentenced to five years in prison.

{¶9} Jeter now presents the following sole assignment of error:

{¶10} "Appellant's rights under Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution were violated and he was improperly denied a Crim.R. 29 acquittal when the conviction was not supported by sufficient evidence."

{¶11} If a Crim.R. 29 motion is improperly denied then a violation of appellant's due process rights under Article I, Section 16 of the Ohio Constitution and the Fourteenth

Amendment to the United States Constitution occurs. *In re Winship* (1970), 397 U.S. 358, 364. Crim.R. 29(A) provides "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." Any claim of error concerning the denial of a Crim.R. 29 motion is waived, however, if the defendant fails to renew this motion at the close of all the evidence. *State v. Wohlgamuth*, 6th Dist. No. WD-01-012, 2001-Ohio-3103 at ¶12. A review of the record shows that Jeter failed to renew his Crim.R. 29 motion at the close of all the evidence. He, therefore, has waived his right to claim this as error.

{¶12} Even though his appeal on grounds of the Crim.R. 29 motion was not preserved, we will review the assignment of error on sufficiency of the evidence. "Sufficiency" of the evidence is a question of law on whether the evidence is legally adequate to support a jury verdict as to all elements of a crime. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Upon review of the sufficiency of the evidence to support a criminal conviction, an appellate court must examine: "the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶13} R.C. 2925.03 provides that:

{¶14} "(A) No person shall knowingly do any of the following:

{¶15} "(1) Sell or offer to sell a controlled substance;

{¶16} "* * *

{¶17} "(C) Whoever violates division (A) of this section is guilty of one of the following:

{¶18} "* * *

{¶19} "(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

{¶20} "* * *

{¶21} "(e) Except as otherwise provided in this division, if the amount of the drug involved * * * equals or exceeds ten grams but is less than fifty grams, * * * and if the offense was committed in the vicinity of a school * * * trafficking in heroin is a felony of the first degree * * *."

{¶22} Jeter argues the evidence was insufficient to establish that he offered to sell a controlled substance because (1) there was no transfer of heroin; (2) the confidential informant arranged a drug transaction with Bruce Cote; there was no arrangement between him and the confidential informant; (3) the words "sell" and/or "heroin" were never used; (4) his only intent was to steal the money, not to sell heroin.

{¶23} In *State v. Patterson* (1982), 69 Ohio St.2d 445, the Ohio Supreme Court held that, "triers of fact should consider the totality of the circumstances and decide

whether, in a particular scenario, there is sufficient evidence to prove beyond a reasonable doubt, that the accused has *knowingly offered* to sell a controlled substance. For example, the dialogue and course of conduct of the accused, as well as the nature of the goods transferred, may be relevant to this determination. Individually, no aspect of any of these examples is the ultimate fact. Collectively, they may or may not prove that the accused *knowingly offered* to sell a controlled substance." Id. at 447. There does not need to be an actual transfer of a controlled substance.

{¶24} Based on the totality of the circumstances, a rational trier of fact could determine Jeter did offer to sell the requisite amount of heroin. First, on the issue of transfer of heroin, someone can be convicted of offering to sell a controlled substance in violation of R.C. 2925.03(A)(1) without transferring the controlled substance to a buyer. *State v. Scott* (1982), 69 Ohio St.2d 439, syllabus.

{¶25} Second, on his failure to use the word "sell" and the drug transaction being arranged between Cote and Doc, Majoy testified that Jeter asked whether he wanted a "half" or a "whole." This clearly indicates an offer. There was also evidence that Cote arranged for a seller to come to Sandusky, and Jeter was the person who arrived at the predetermined location.

{¶26} Third, on the issue that there was no evidence of heroin because there was no actual transfer of heroin nor use of the word "heroin" during the conversation, Majoy testified that the words "half" or "whole" are commonly used when purchasing heroin. While a "half" or "whole" may also indicate cocaine or marijuana, Majoy stated that it is customary for runners not to use the drug they are running. Majoy identified himself to

Jeter as a cocaine user and Jeter said he used marijuana, thereby eliminating these drugs as the subject of the deal. Also, Doc and Cote, the people who set up the deal, were known heroin users. Both Majoy and Chandler testified that the specific drug is rarely mentioned during a drug transaction and sellers use their own terminology. Majoy stated that a "whole" is equivalent to 28.3 grams or one ounce of heroin and that amount of heroin would cost between $800 and $1,200 at the time of the sale. Majoy gave Jeter $800.

{¶27} The fourth and final issue is Jeter's contention that he never intended to sell heroin but instead intended to steal the money. Because intent lies within the privacy of a person's own thoughts and is not susceptible to objective proof, intent is determined from the surrounding facts and circumstances, and persons are presumed to have intended the natural, reasonable and probable consequences of their voluntary acts. *State v. Garner* (1995), 74 Ohio St.3d 49, 60. The evidence shows that Jeter asked Majoy if he wanted a "whole" or "half." He also made statements to the detective that there was more money to be made down the line which Majoy testified implied further sales between the two parties. When asked about the actual source of the drugs, Jeter pointed out a gray car, which had circled the block four times. Majoy also testified that Jeter gave him a "guarantee" which is unusual but still occurs when the buyer and seller are unfamiliar with each other. Finally, after Majoy gave Jeter the $800, the detectives saw Jeter heading in the same direction as the gray car which he had said contained his seller.

{¶28} Thus, we conclude that, when viewed in a light most favorable to the prosecution, based on the totality of the circumstances, there was more than adequate

evidence presented from which any rational trier of fact could have found that Jeter offered to sell heroin. The sole assignment of error is not well-taken.

{¶29} Based on the above, we find that substantial justice was done to the appellant. The judgment of the Erie County Court of Common Pleas is affirmed. Costs of this appeal are assessed to the appellant.

JUDGMENT AFFIRMED.

Mark L. Pietrykowski, J. _____
JUDGE

Judith Ann Lanzinger, J. _____
JUDGE

Arlene Singer, J. _____
CONCUR.
JUDGE