

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

State of Ohio

Court of Appeals No. H-10-027

Appellee

Trial Court No. CRI-2010-0582

v.

Andrew F. Olaniyan

**DECISION AND JUDGMENT**

Appellant

Decided: July 29, 2011

\* \* \* \* \*

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

Charles R. Hall, Jr. and Randy F. Hoffman, for appellant.

\* \* \* \* \*

SINGER, J.

{¶ 1} Appellant, Andrew F. Olaniyan, appeals from his conviction in the Huron County Court of Common Pleas on one count of trafficking in crack cocaine. For the reasons that follow, we affirm.

{¶ 2} On July 7, 2010, appellant was indicted on one count of trafficking in crack cocaine, a violation of R.C. 2925.03(A)(1) and (C)(4)(a) and a felony of the fifth degree. A trial commenced on September 23, 2010. Detective Todd Temple of the Norwalk City Police Department testified that in December 2009, Norwalk resident Kristen Bechtel agreed to participate in an undercover drug buy. She told Temple that she would be able to purchase drugs from appellant. Temple had Bechtel come to the police station where she and her car were searched for contraband. Bechtel was fitted with a digital recording device, a transmitter and marked money for the buy. She drove to appellant's apartment and Temple parked his vehicle a couple of blocks away. Temple heard Bechtel call appellant to tell him she had arrived. When Temple saw a man walking from appellant's apartment and toward his unmarked car, he decided to leave fearing that appellant had employed "look-outs." He soon met Bechtel at a prearranged location where she gave him crack cocaine purchased from appellant.

{¶ 3} Kristen Bechtel testified that she is a former crack cocaine user and that she has purchased crack from appellant in the past. On December 17, 2009, she called appellant on the phone and asked if she could purchase crack from him. Based on his response, she called Detective Temple who summoned her to the police station where she was prepared for the controlled buy. She then proceeded to appellant's apartment. Bechtel testified that appellant asked her if she was wearing a wire and removed the battery of her cell phone to make sure there was no wire. When he was satisfied that she was not wired, he sold her \$50 worth of crack cocaine. Bechtel testified that she left

appellant's apartment and headed to the prearranged location where she met Temple and gave him the crack.

{¶ 4} On September 23, 2010, a jury found appellant guilty as charged. He was sentenced to 11 months in prison. Appellant now appeals setting forth the following assignments of error:

{¶ 5} "I. The appellant was denied a fair trial due to questions made by the prosecutor during the jury trial.

{¶ 6} "II. The jury erred as a matter of law by finding the appellant guilty because the verdict was against the manifest weight of the evidence."

{¶ 7} In his first assignment of error, appellant alleges prosecutorial misconduct. Specifically, appellant points to three questions asked of Bechtel during her redirect examination.

{¶ 8} Generally, a prosecutor's conduct at trial is not grounds for reversal unless that conduct deprived the defendant of a fair trial. *State v. Loza* (1994), 71 Ohio St.3d 61, 78, overruled on other grounds. "The test for prosecutorial misconduct is whether the remarks were improper and, if so, whether they prejudicially affected substantial rights of the accused." *State v. Eley* (1996), 77 Ohio St.3d 174, 187, overruled on other grounds; *State v. Lott* (1990), 51 Ohio St.3d 160. In determining whether the supposed prosecutorial misconduct prejudiced a defendant, an appellate court considers the following factors: "(1) the nature of the remarks, (2) whether an objection was made by

counsel, (3) whether corrective instructions were given by the court, and (4) the strength of the evidence against the defendant." *State v. Braxton* (1995), 102 Ohio App.3d 28, 41.

{¶ 9} On redirect, the prosecutor asked Bechtel whether she had seen appellant since his arrest, whether anyone threatened her if she testified, and whether she was afraid to testify at appellant's trial. Defense counsel objected to all three questions and the trial judge sustained all three of the objections. After a side bar with counsel, the trial judge then gave the jury the following cautionary instruction:

{¶ 10} "At this time, I am going to have a cautionary instruction. There was a couple of questions there in a row, inquired into events that might have taken place after the events that are in question here for the offense today. You are to disregard those at this time."

{¶ 11} Here, defense counsel objected to each of the questions and the trial judge gave a cautionary instruction. We presume that jurors follow a court's instructions. *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044. As for the evidence against appellant, we find it compelling. Not only was he identified by Bechtel but he was also captured on audiotape selling crack to her. Accordingly, we do not find that the prosecutor's questions prejudiced appellant. Appellant's first assignment of error is found not well-taken.

{¶ 12} In his second assignment of error, appellant contends that the jury verdict was against the manifest weight of the evidence.

{¶ 13} The "weight of the evidence" refers to the jury's resolution of conflicting testimony. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. In determining whether a verdict is against the manifest weight of the evidence, the appellate court sits as the "thirteenth juror" and "\* \* \* weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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." *Id.* An appellate court must defer to the factual findings of the jury regarding the weight to be given the evidence and credibility of the witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. When examining witness credibility, "[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan* (1986), 22 Ohio St.3d 120, 123. The factfinder is free to believe all, part, or none of the testimony of each witness appearing before it. *State v. Brown*, 11th Dist. No. 2002-T-0077, 2003-Ohio-7183, ¶ 53.

{¶ 14} Appellant's argument in this assignment of error focuses on the credibility of Kristen Bechtel, the state's main witness. Appellant contends that as an admitted crack user, she is not believable. Moreover, appellant contends that she only agreed to become an informant believing it would help her teenage son who had recently been arrested on an unrelated charge.

{¶ 15} At trial, Detective Temple testified that he was involved in the investigation of Bechtel's son. Through that, he met Kristen Bechtel who told him she was tired of the drug activity in her neighborhood and tired of living the drug lifestyle. Temple testified that he asked her if she would be interested in helping the police clean up the area. Temple testified that he never told Bechtel that her assistance may result in a favorable outcome for her son, nor did she ask him for special consideration. Bechtel testified that she decided to become an informant because she wanted to "be done with and over with" the drug lifestyle.

{¶ 16} Here, the trier of the facts, in this case the jury, chose to believe the testimony of Temple and Bechtel. On review, we cannot say that the jury clearly lost its way or perpetrated a manifest miscarriage of justice. Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 17} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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