

[Cite as *State v. Pavlick*, 2003-Ohio-6632.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81925

STATE OF OHIO	:	
	:	
Plaintiff-appellee	:	
	:	
vs.	:	JOURNAL ENTRY
	:	AND
RODRICAN PAVLICK	:	OPINION
	:	
Defendant-appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	DECEMBER 11, 2003.
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CHARACTER OF PROCEEDING:	Criminal appeal from Cuyahoga County Court of Common Pleas Case No. CR-420254
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JUDGMENT:	AFFIRMED.
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DATE OF JOURNALIZATION:

APPEARANCES:

For plaintiff-appellee	:	WILLIAM D. MASON Cuyahoga County Prosecutor RUFUS L. WARR, Assistant Justice Center, Courts Tower 1200 Ontario Street Cleveland, Ohio 44113
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For defendant-appellant	:	MICHAEL T. FISHER Attorney at Law 55 Public Square
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ROCCO, KENNETH A., A.J.

{¶1} Defendant-appellant Rodrican Pavlick appeals from his convictions after a bench trial on three counts, viz., trafficking in PCP, possession of PCP, and possession of criminal tools.

{¶2} Appellant asserts his convictions are sustained by neither sufficient evidence nor the weight of the evidence. Following a review of the record, this court disagrees. Therefore, appellant's convictions are affirmed.

{¶3} Appellant's convictions result from a Cleveland Police Department investigation of a downstairs residential unit in a house located at 1068 East 71<sup>st</sup> Street. The investigation originally had been triggered by neighbor complaints and police officer observation of what appeared to be drug sales taking place there.

{¶4} During the investigation, police detective Edwin Cuadra, under the supervision of Narcotics Unit Detective Scott Hencke, made two "controlled buys" of crack cocaine at the residence. These took place on November 21 and November 29, 2001, through the use of a confidential reliable informant (a "CRI"). The CRI, who was being funded and covertly observed by Cuadra, met appellant at the door of the residence each time. The CRI returned with .52 grams of the substance on the first occasion, and .72 grams on the second.

{¶5} The detectives subsequently obtained a search warrant for the premises. With four other colleagues, Henke and Cuadra executed the warrant on the evening of

December 4, 2001. Detective Ruffin was one of the first officers to gain ingress to the unit; based upon the investigation, Ruffin immediately proceeded to the first bedroom to the right of the entry door.

{¶6} As he moved, Ruffin noticed a man later identified as co-defendant Sheldon Reeves standing before him. Reeves appeared to have been approaching the entryway while removing an item from his waistband, but, seeing the police officers already inside, Reeves quickly turned and went into the bedroom. Ruffin observed Reeves make a movement toward the bed that indicated he was placing the item under it.

{¶7} Within seconds, the detectives also were in the bedroom. They ordered appellant and the two others with him, Reeves and another man later identified as Ulysses Goodwin, to lie on the floor where they stood. The three men complied.

{¶8} After the suspects had been handcuffed, the detectives raised them one at a time. On the floor where appellant had been, the officers discovered \$520 in cash. A pat-down search of Reeves also yielded cash; he carried approximately \$100 in both a front and a rear pants pocket. Goodwin carried a small brown glass vial in one of his pants pockets.

{¶9} The detectives also found a bag containing several rocks of crack cocaine on the bed, a gun under the bed in the location Reeves had placed the item he had been carrying, and three more brown glass vials approximately three feet away from appellant's location in the room behind one of the bedroom doors. One bottle was larger than the others, and the two others were similar in size to the one Goodwin had on his person. Later analysis of the contents of the vials indicated they each contained amounts of the drug commonly known as "PCP."

{¶10} Appellant subsequently was charged with his two co-defendants in an eight-count indictment; six of the charges applied to appellant. After entering waivers of their right to a jury trial, appellant and Reeves were tried together to the bench.

{¶11} The trial court eventually found appellant guilty of three of the charges, viz., trafficking in PCP, possession of PCP, and possession of criminal tools, to wit: money. Appellant was found not guilty of the other three charges and not guilty of the firearm specification contained in one of the counts. Upon receiving his sentence of concurrent terms of incarceration of one year on each count, appellant instituted this appeal.

{¶12} Appellant presents the following assignments of error for review:

“I. THE COURT’S DECISION FINDING APPELLANT GUILTY OF DRUG POSSESSION WAS NOT SUPPORTED BY SUFFICIENT PROBATIVE EVIDENCE, AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

THE COURT’S DECISION FINDING APPELLANT GUILTY OF DRUG TRAFFICKING WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE, AND WAS AGAINST THE WEIGHT OF THE EVIDENCE.

THE COURT’S DECISION FINDING APPELLANT GUILTY OF POSSESSION OF CRIMINAL TOOLS WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE, AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶13} Appellant argues his convictions for each of the three offenses are improper as they are unsupported by either sufficient evidence or the weight of the evidence. Appellant contends the trial court should have granted his motions for acquittal on the basis the state failed to prove either that he possessed the PCP or criminal tools, or that he

trafficked in the PCP. Appellant's argument is unpersuasive.

{¶14} A defendant's motions for acquittal should be denied if the evidence is such that reasonable minds could reach different conclusions as to whether each material element of the crimes has been proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 1997-Ohio-372; *State v. Jenks* (1991), 61 Ohio St.3d 259; *State v. Bridgeman* (1978), 55 Ohio St.2d 261. The trial court is required to view the evidence in a light most favorable to the state. *State v. Martin* (1983), 20 Ohio App.3d 172.

{¶15} With regard to an appellate court's function in reviewing the weight of the evidence, this court is required to consider the entire record and determine whether in resolving any conflicts in the evidence, the trier-of-fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Id.* at 175.

{¶16} Thus, this court must be mindful that the weight of the evidence and the credibility of the witnesses are matters primarily for the trier-of-fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶17} Although the mere presence of a person in the vicinity contraband is not enough to support the element of possession, if the evidence demonstrates defendant was able to exercise dominion or control over the illegal objects, defendant can be convicted of possession. *State v. Wolery* (1976), 46 Ohio St.2d 316; cf., *State v. Haynes* (1971), 25 Ohio St.2d 264. Moreover, where an amount of

readily usable drugs is in close proximity to a defendant, this constitutes circumstantial evidence to support the conclusion that the defendant was in constructive possession of the drugs. *State v. Stevens* (Oct. 18, 2001), Cuyahoga App. No. 78958; *State v. Benson* (Dec. 24, 1992), Cuyahoga App. No. 61545; *State v. Pruitt* (1984), 18 Ohio App.3d 50. Circumstantial evidence alone is sufficient to support the element of constructive possession. *State v. Jenks*, supra; *State v. Lavender* (Mar. 12, 1992), Cuyahoga App. No. 60493.

{¶18} In this case, the three detectives provided evidence establishing every element of the offenses. Cuadra testified he observed during the controlled buys that appellant twice opened the door of the residence in response to the CRI's knock. On the first occasion, appellant retreated inside for a moment, then returned to hand the CRI contraband drugs in exchange for cash. On the second occasion, the CRI returned with the drugs and without the money after following appellant into the residence.

{¶19} Hencke testified he found personal items and papers that belonged to appellant in the residence; these included appellant's state identification card in the kitchen. He also found three vials of PCP in the bedroom. One was a large one, two were small ones; the two small ones were the same size as the one Goodwin had in his pants pocket. These three bottles had been placed on the floor behind a bedroom door within three feet of appellant. Hencke further testified that upon the officers' entry into the bedroom,

appellant immediately was ordered to the floor. When the detectives hauled him to his feet after his arrest, appellant was found to have been lying on a large amount of money. Ruffin corroborated Hencke's statements.

{¶20} This evidence constituted circumstantial proof that appellant was conducting a drug-trafficking business out of the residence. Not only did he sell drugs himself, he also placed larger amounts of PCP into smaller vials, provided them to his cohorts, and collected the cash obtained when the drugs were sold.

{¶21} On similar facts, this court has determined a defendant's convictions for drug possession, drug trafficking, and possession of criminal tools were proper. *State v. Porter*, Cuyahoga App. No. 81123 2002-Ohio-6054; *State v. Hopkins* (Sept. 5, 2001), Cuyahoga App. No. 80652; *State v. Mason* (July 5, 2001), Cuyahoga App. No. 78606.

{¶22} Consequently, appellant's assignments of error are overruled.

{¶23} Appellant's convictions are affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



KENNETH A. ROCCO  
ADMINISTRATIVE JUDGE

ANNE L. KILBANE, J.                      CONCURS  
IN JUDGMENT ONLY AND CONCURS WITH  
THE SEPARATE CONCURRING OPINION

DIANE KARPINSKI, J.                      CONCURS  
WITH A SEPARATE CONCURRING OPINION

KARPINSKI, J., concurring.

{¶24} I concur with the majority but write separately to clarify the law explaining how an appellate court reviews a challenge to the manifest weight of the evidence. The majority cites the 1967 case of *State v. DeHass*, *infra*. In 1997, however, the Supreme Court of Ohio provided a different perspective on the role of the appellate court in challenges to manifest weight: "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 factfinder's resolution of the conflicting testimony." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, citing *Tibbs v. Florida* (1982) 457 U.S. 31 at 42.

{¶25} The Ohio Supreme Court then quotes a fuller explanation found in *State v. Martin* (1983), 20 Ohio App.3d 172, 175: "The court, reviewing the entire record, 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction."

{¶26} The Ohio Supreme Court used this same statement when it explained the standard it was using in the 2001 case of *State v. Issa*, 93 Ohio St.3d 49. I believe this fuller and more recent statement provides the better explanation of the role of a reviewing court on the manifest weight of the evidence.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).  
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