[Cite as *State v. Powell*, 2009-Ohio-5225.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92281

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JEREMIAH POWELL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-508512

BEFORE: Rocco, J., Cooney, A.J., and Stewart, J.

RELEASED: October 1, 2009

JOURNALIZED:

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KENNETH A. ROCCO, J.:

{¶ 1} Defendant-appellant Jeremiah Powell appeals from his convictions after a bench trial for possession of and trafficking in crack cocaine.

{¶ 2} Powell presents two assignments of error. He claims his conviction for drug trafficking is not supported by sufficient evidence. He further claims neither of his convictions is supported by the manifest weight of the evidence presented at trial.

{¶ 3} Upon a review of the record, this court disagrees. Therefore, his convictions are affirmed.[1]

{¶ 4} The state presented the testimony of Cleveland Police Detective Robert Miles. Miles stated he and his partner were on duty in their unmarked vehicle on the afternoon of March 14, 2008 when they decided to stop at a convenience store located at West 80th Street and Detroit Avenue for "a bottle of water."

[1]In so stating, this court recognizes the trial court's decision at sentencing that "Count 3 merges with Count 1." *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, fn.3.

{¶ 5} After the purchase, Miles returned to the passenger seat of the police car. He "just * * * happened to look up and noticed two individuals engaged in conversation about 25 feet or less away in front" of the car.

{¶ 6} Miles testified that one man, later identified as Powell, dropped "a plastic bag" from his right hand into the other man's left hand. Then Powell and the other man, later identified as Billy Cripple, turned and walked northbound. Cripple was "looking down at the plastic bag in his left hand and still engaged in a conversation with" Powell.

{¶ 7} Miles testified that his partner started up the police vehicle and rolled behind Powell and Cripple. After the two men had taken "about ten paces," Miles's partner stopped the car, and the detectives exited.

{¶ 8} Both Powell and Cripple turned to look and seemed "surprised that [the detectives] were right behind them." Cripple "transferred the plastic bag from his left hand to his right and attempted to walk away in front of [their] car," but Miles detained him. Miles's partner detained Powell.

{¶ 9} Miles asked Cripple to open his right hand. When Cripple complied, Miles saw "a corner of a sandwich plastic bag ripped off * * * about three inches by two inches, and inside of it, it contained two smaller knotted [corners of] plastic bags * * * [with] smaller pieces of * * * crack cocaine,

individually wrapped." Later laboratory analysis established the weight of the drugs as .32 grams.

{¶ 10} Both Powell and Cripple were arrested. Miles found a $20 bill "balled up in Cripple's right hand," and another $20 bill in his pants pocket.

{¶ 11} Powell subsequently was indicted with Cripple, charged with one count of possession of and two counts of trafficking in crack cocaine in an amount less than one gram. Powell's case proceeded to a bench trial.

{¶ 12} After hearing Miles's testimony, the trial court granted Powell's motion for acquittal as to Count 2, but denied it as to the other counts. Powell then testified in his own behalf and called Cripple as a defense witness.

{¶ 13} Both men stated they just happened to meet that day. Cripple testified he had found the drugs near a trash can and was showing Powell his discovery when the detectives came upon them. Powell indicated he did not have time to understand what Cripple displayed because the detectives were "right there."

{¶ 14} The trial court ultimately found Powell guilty of the remaining two counts, "merged" the convictions, and placed Powell on one year of community control.

{¶ 15} Powell now appeals from his convictions with the following two assignments of error.

{¶ 16} "I. Defendant's convictions for drug trafficking and possession were against the manifest weight of the evidence.

{¶ 17} "II. The accused's conviction for drug trafficking was not supported by sufficient evidence as required by due process in violation of U. S. Constitution Amendment XIV and Crim.R. 29."

{¶ 18} Powell argues in his second assignment of error that the trial court erred in denying his motion for acquittal on Count 3. He contends the state failed to provide sufficient evidence to establish his guilt of the offense of trafficking in crack cocaine. Powell further argues in his first assignment of error that neither

{¶ 19} of his convictions is supported by the manifest weight of the evidence.

{¶ 20} A defendant's motion 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.

{¶ 21} Powell was charged in Count 3 with violation of R.C. 2925.03(A)(2), i.e., he "did knowingly prepare for shipment, ship, transport, deliver, prepare for distribution or distribute a controlled substance, to wit: Crack Cocaine, * * * knowing or having reasonable cause to believe such drug was intended for sale * * * by the offender * * *."

{¶ 22} Miles testified that he saw Powell drop a plastic bag into Cripple's hand. The bag contained two smaller plastic bags, each of which had smaller pieces of crack cocaine inside.

{¶ 23} Miles also testified this was a common method of packaging crack cocaine for sale, each of the individual bags "would be consistent with a $20 sale of crack cocaine on the streets," and Cripple had a $20 bill in his hand and another $20 in his pocket. Finally, Miles indicated Powell and Cripple were conversing as they walked.

{¶ 24} Miles's testimony, when viewed in a light most favorable to the prosecution, indicated Powell brought the cocaine ready for purchase by Cripple, and the men were discussing the price as they were confronted by the detectives. Since this constituted sufficient evidence to establish the elements of the crime, the trial court committed no error in denying Powell's

motion for acquittal on Count 3. *State v. Curry* (Dec. 17, 1992), Cuyahoga App. No. 63438; *State v. Gilbert* (Sept. 22, 1994), Cuyahoga App. No. 66269.

{¶ 25} As to Powell's assertion concerning the manifest weight of the evidence to support his convictions, the test to be applied when reviewing a claim that a conviction is against the manifest weight of the evidence was set forth in *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, citing *State v. Martin*, supra. The test is "much broader" than the test for sufficiency; i.e., this court reviews the entire record to determine whether in resolving any conflicts in the evidence, the factfinder "clearly lost its way and created such a manifest miscarriage of justice that the conviction[s] must be reversed and a new trial ordered." Id., at 175.

{¶ 26} Moreover, this court must remain mindful that the weight of the evidence and the credibility of the witnesses are matters primarily for the factfinder to assess. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶ 27} In this case, the co-defendant's version of the events not only appeared contrived, but seemed highly unlikely, especially in view of Cripple's prior conviction for possession of crack cocaine. Certainly, both men had an interest in portraying the incident as a serendipitous event. The trial court, therefore, acted well within its prerogative to give the

co-defendant's story little credit. *State v. Smith*, Cuyahoga App. No. 91015, 2009-Ohio-232; *State v. Gilbert*, supra.

{¶ 28} For the foregoing reasons, Powell's assignments of error are overruled.

{¶ 29} His convictions are affirmed.[2]

It is ordered that appellee recover from 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 common pleas court to carry this judgment into execution.

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

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KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, A.J., and
MELODY J. STEWART, J., CONCUR

[2]See fn 1.