

[Cite as *State v. Manlet*, 2010-Ohio-3503.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93309

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

ERIC MANLET

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-513247-A

BEFORE: Rocco, P.J., Blackmon, J., and Dyke, J.

RELEASED AND JOURNALIZED: July 29, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Eric Manlet appeals from his convictions after a trial court found him guilty of several counts that charged him with trafficking in marijuana with schoolyard and firearm specifications.

{¶ 2} Manlet's two assignments of error challenge the sufficiency and the manifest weight of the evidence presented to support only the specifications. Since this court finds the specifications were supported by sufficient evidence and by the manifest weight of the evidence, Manlet's assignments of error are overruled. His convictions, therefore, are affirmed.

{¶ 3} According to the testimony presented at trial of this matter, in early June 2008 the Lakewood mayor's office received complaints of unusual foot and vehicular traffic occurring at the downstairs unit of a duplex located at 1327 Lakewood Avenue. Since such activity was indicative of drug trafficking, the police department's narcotics unit decided to investigate the matter. Det. Guzik was in charge of the investigation.

{¶ 4} Guzik's investigation revealed Manlet and his brother lived in the downstairs unit. On June 18, 2008, Guzik called in a confidential reliable informant ("CRI") to the police station. When Guzik told the CRI of the focus of the investigation, the CRI indicated a familiarity with the address, mentioned that the individual used a "street name of E," and also indicated he knew who to call to arrange a contraband purchase there.

{¶ 5} Thus, while Guzik monitored and recorded it, the CRI made a telephone call to a woman named Brittany Curiale. The CRI told Curiale he wanted to purchase some marijuana. Curiale directed the CRI to pick her up from her home.

{¶ 6} Prior to sending the CRI out, Guzik searched the CRI and the CRI's car and provided him with twenty-five dollars in marked currency. Guzik then followed the CRI as he drove to Curiale's home. Meanwhile, Guzik also sent another detective to keep the duplex under surveillance.

{¶ 7} After the CRI picked up Curiale, the CRI drove to the duplex and pulled into the driveway. Curiale got out, went to the front door into the downstairs unit, remained inside for a few minutes, then returned to the CRI's car.

The CRI drove her home, then met with Guzik. At that time, the CRI handed over to Guzik a bag of marijuana that weighed over 4 grams. The CRI indicated he gave the marked money to Curiale, who, in making the purchase, kept five dollars as her fee for "middlemanning the deal."

{¶ 8} Guzik arranged another transaction with the same CRI on July 9, 2008. He followed a similar procedure, but this time, the CRI wore a "wire." In addition, the CRI asked if he could also "purchase a firearm."

{¶ 9} Guzik sent a unit to maintain a "stationary surveillance" of the target address while he followed the CRI. As before, the CRI picked up Curiale, drove her to the Manlet residence, gave her the marked money, waited for her, and she returned with approximately ten grams of marijuana.

{¶ 10} Guzik heard the CRI inquire about the firearm's availability. Curiale responded that she "forgot," so she immediately made a telephone call. Upon speaking with her contact, she indicated a purchase would cost seventy dollars. The CRI agreed to obtain the money. He took Curiale back to her home before meeting with Guzik.

{¶ 11} Twenty minutes later, after Guzik supplied the CRI with the money, the CRI once again retrieved Curiale and proceeded to the Manlet residence.

This time, the CRI entered the house with Curiale. When the CRI exited, he took Curiale home, met with Guzik, and handed Guzik a semiautomatic pistol.

{¶ 12} Based upon these activities, Guzik obtained a search warrant for the downstairs unit. He executed the warrant that same afternoon.

{¶ 13} The officers who took part in the search of the residence found several incriminating items in Manlet's bedroom. These items included over two hundred dollars, cellular telephones, "packaging materials and residue," and a "black bag." This bag contained a digital scale, two smaller bags of marijuana, and another seventy-five dollars.

{¶ 14} Manlet cooperated with the officers; he "admitted to being involved in the sale of marijuana. Indicated it was just for a monetary gain because he was unemployed." Manlet told Guzik "that the firearm that we purchased was provided to him by his source of supply of the marijuana as well."

{¶ 15} Manlet subsequently was indicted with Curiale on five counts of drug trafficking, one count of possession of criminal tools, and one count of unlawful transaction in weapons.¹ The drug trafficking counts each contained a firearm, a schoolyard, and three forfeiture specifications.

¹Counts one and two pertained to the controlled buys that took place on June 18, 2008. The remaining counts pertained to the incidents that occurred on July 9, 2008.

{¶ 16} Manlet executed a waiver of his right to a jury trial. At the conclusion of the state's case-in-chief, the trial court dismissed the firearm specifications attached to the first two counts of the indictment. At the conclusion of the evidence, the trial court found Manlet guilty on all counts except for the charge of unlawful transaction in weapons. The trial court ultimately sentenced Manlet for his convictions to concurrent prison terms that totaled a year and six months.

{¶ 17} Manlet presents two assignments of error in this appeal. They state:

“I. The convictions for the firearm specification and the schoolyard specification were against the manifest weight of the evidence.

“II. The convictions for the firearm specification and the schoolyard specification were not supported by sufficient evidence and the trial court erred when it overruled Appellant's Motion for Criminal Rule 29 acquittal.”

{¶ 18} Manlet argues that the state failed to support either the firearm or the schoolyard specifications attached to the drug trafficking counts with sufficient evidence; therefore, the trial court should have granted his motion for acquittal as to those specifications. Manlet further argues that, even if the state provided sufficient evidence of those particular specifications, nevertheless, they were not supported by the manifest weight of the evidence.

{¶ 19} Crim.R. 29(A) requires a trial court to “order the entry of a judgment of acquittal of one or more offenses charged in the indictment, * * * if the evidence is insufficient to sustain a conviction of such offense or offenses.” In order to determine whether the evidence before a trial court was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the state. *State v. Dennis* (1997), 79 Ohio St.3d 421, 430, 1997-Ohio-372, 683 N.E.2d 1096.

{¶ 20} An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to 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.

State v. Thompkins (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id.*

{¶ 21} The test to be applied when reviewing a claim that a conviction is against the manifest weight of the evidence also was set forth in *Thompkins*, at 387. 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. In conducting its review, 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, 227 N.E.2d 212, paragraph one of the syllabus.

{¶ 22} The state in this case alleged that in committing the crimes of drug trafficking on July 9, 2008, Manlet “had a firearm on or about [his] person or under [his] control *while* committing the offense.” (Emphasis added.) In presenting his argument, Manlet asserts the state failed to establish the necessary temporal connection. He contends the evidence demonstrated the CRI’s purchase of the firearm was a separate transaction unrelated to the drug trafficking incidents.

{¶ 23} However, in considering sufficiency, the evidence must be viewed in a light most favorable to the prosecution. The officers who conducted the surveillance of Manlet’s residence on July 9, 2008 testified that in the approximately twenty minutes between the two visits the CRI made with Curiale, no one else either left or entered the premises.

{¶ 24} Furthermore, Guzik testified that, during the execution of the search warrant, Manlet admitted he sold marijuana, and admitted he obtained the gun from his marijuana supplier. The officers stated they found a quantity of ready-to-sell marijuana in Manlet’s bedroom. Since the evidence proved Manlet

provided the gun to the CRI only twenty minutes after providing him the marijuana, a rational trier of fact could conclude Manlet “had” the firearm “on or about his person while committing” the drug trafficking offenses. *State v. Patterson*, Cuyahoga App. No. 91945, 2009-Ohio-4041.

{¶ 25} The trial court indicated it believed the officers’ testimony in the foregoing respects, and it relied upon that testimony when it found Manlet guilty of the firearm specifications. Based upon the record, this court cannot find that Manlet’s convictions on the firearm specifications were either based upon insufficient evidence or were against the manifest weight of the evidence. *Id.*

{¶ 26} Manlet further argues the state failed to prove that his residence was close to a school² for purposes of the schoolyard specification. In order to convict a defendant of a schoolyard specification, the state must prove beyond a reasonable doubt that the drug transaction occurred “on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.”

{¶ 27} R.C. 2925.01(R) defines “School premises” as either of the following:

²“School” is defined as “any school operated by a *board of education*, any community school established under Chapter 3314. of the Revised Code, or any nonpublic school for which the state *board of education* prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.” R.C. 2925.01(Q) (Emphasis added).

{¶ 28} “(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

{¶ 29} “(2) Any other parcel of real property that is owned or leased by a *board of education* of a school, the governing authority of a community school established under Chapter 3314. of the Revised Code, or the governing body of a nonpublic school for which the state *board of education* prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.” (Emphasis added.)

{¶ 30} According to R.C. 2925.01(S), “‘School building’ means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.”

{¶ 31} In this case, on direct examination, the prosecutor asked Guzik about the location of Manlet’s residence; specifically, if there were “any schools nearby[.]” Guzik testified, “There’s a day care, a licensed day care, right on the

corner.” He stated the facility’s name was “Faith Presbyterian Head Start Day Care,” and that it was “a stone’s throw” from Manlet’s residence.

{¶ 32} The prosecutor asked Guzik if the facility were “within a thousand feet,” and Guzik responded, “Oh, yes.” The prosecutor then asked Guzik if he knew whether the facility was “State certified.” Guzik answered, “It is.” Manlet challenged none of these statements.

{¶ 33} Although there thus was little indication that the facility was a “school” as that term is defined in R.C. 2925.01(Q), the facts of this case are directly on point with the Ohio Supreme Court’s opinion in *State v. Manley*, 71 Ohio St.3d 342, 1994-Ohio-440, 643 N.E.2d 1107. Therein, the supreme court addressed the issue of whether “the presence of a statutorily defined school can be shown only by some affirmative proof that a board of education operated the premises.” *Id.* at 347-348.

{¶ 34} In *Manley*, two police officers and a police informant all testified that the drug transaction “occurred within the immediate vicinity of a school,” but provided no elaboration regarding as to whether the school was either operated by a board of education or operated under standards set by a board of education. *Id.* at 348. The court held that, since that evidence went unchallenged by the defense, the state was not required to present evidence that the school was operated by a board of education. *Id.* Such a requirement, the court explained, would be inconsistent with the court’s prior decisions allowing the elements of an

offense to be established by circumstantial as well as direct evidence. *Id.*, citing *State v. Murphy* (1990), 49 Ohio St.3d 206, 551 N.E.2d 932, and *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492.

{¶ 35} The supreme court noted that there was no evidence that the facility in question was *not* a school. In fact, the defense never brought the issue to the trial court's attention; instead, appellant first raised the issue on appeal. Under such circumstances, the court concluded that reasonable minds could conclude beyond a reasonable doubt that the state had proven the school specification. *Id.*

{¶ 36} Since the decision in *Manley*, it often has been distinguished on its facts. See, e.g., *State v. Darling*, Cuyahoga App. No. 92120, 2009-Ohio-4198, ¶19 (state conceded evidence was insufficient); *State v. Larry*, Richland App. No. 09 CA 49, 2009-Ohio-5948, ¶47 (sufficiency of evidence challenged on cross-examination). However, in the absence of distinguishing facts, this court is obliged to follow decisions of the supreme court. *State v. Bowens*, Ashtabula App. No. 2002-A-0051, 2003-Ohio-5536; cf., *State v. Olvera* (Oct. 15, 1999), Williams App. Nos. WM-98-022, WM-98-023 (evidence insufficient to establish “vicinity”).

{¶ 37} The record reflects Manlet failed to challenge the adequacy of the state's evidence with respect to the schoolyard specification at a time when the trial court could have considered it. Thus, pursuant to *Manley*, his sufficiency

argument on appeal fails. Moreover, in *State v. Taylor*, Scioto App. No. 07CA3147, 2007-Ohio-7174, fn. 3, the court determined that the manifest weight of the evidence supported the finding of guilt on a drug-trafficking charge with a schoolyard specification based, in part, on the officer's testimony that the residence was "780 feet" from "Highland Head Start."

{¶ 38} Consequently, Manlet's assignments of error are overruled.

{¶ 39} His convictions are affirmed.

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. The defendant's convictions 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, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANN DYKE, J., CONCUR