[Cite as *State v. Wells*, 2009-Ohio-4611.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. CHERYL A. WELLS Appellant	C. A. No. 08CA009481 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 07CR073935

DECISION AND JOURNAL ENTRY

Dated: September 8, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Cheryl Wells, appeals from her conviction in the Lorain County Court of Common Pleas. This Court affirms.

I

{¶2} On July 13, 2007, police officers arrested Wells after stopping a vehicle in which she was a passenger, conducting a search, and finding a crack stem and a pill bottle containing marijuana in her purse. On August 9, 2007, a grand jury indicted Wells on the following counts: (1) possession of drugs, a fifth-degree felony in violation of R.C. 2925.11(A); (2) use or possession of drug paraphernalia, a fourth-degree misdemeanor in violation of R.C. 2925.14(C)(1); and (3) possession of drugs, a minor misdemeanor in violation of R.C. 2925.11(A). The matter proceeded to a jury trial on February 4, 2008. The jury returned a finding of guilt on both misdemeanor counts, but deadlocked on the remaining felony count. As

such, the trial court declared a mistrial on Wells' first count for fifth-degree felony possession of drugs.

{¶3} Subsequently, Wells agreed to enter a plea of no contest on the remaining count for fifth-degree felony possession. Wells executed a waiver of rights form in conjunction with her plea on July 3, 2008. The trial court accepted Wells' plea the same day. The court sentenced Wells to three years of community control and suspended her license for six months. Wells now appeals from her fifth-degree felony conviction for possession of cocaine and raises one assignment of error for our review.

II

Assignment of Error

> "THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE EVIDENCE WAS INSUFFICIENT TO PROVE THE OFFENSE OF POSSESSION OF COCAINE BEYOND A REASONABLE DOUBT IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO."

{¶4} In her sole assignment of error, Wells argues that her conviction for fifth-degree felony possession of cocaine is based on insufficient evidence. Specifically, Wells argues that the State failed to prove that she knowingly possessed the crack stem that officers found in her purse.

{¶5} R.C. 2925.11(A) provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance." "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably

exist." R.C. 2901.22(B). "Cocaine and its derivative, crack, are both controlled substances." *State v. Forney*, 9th Dist. No. 24361, 2009-Ohio-2999, at ¶7.

{¶6} A plea of no contest "is not an admission of [a] defendant's guilt, but is an admission of the truth of the facts alleged in the indictment[.]" Crim.R. 11(B)(2). "Where the indictment *** contains sufficient allegations to state a felony offense and the defendant pleads no contest, the court must find the defendant guilty of the charged offense." *State v. Bird* (1998), 81 Ohio St.3d 582, syllabus.

{¶7} Wells entered a plea of no contest to the following count in her indictment:

> "That [WELLS], on or about July 13, 2007, at Lorain County, Ohio, did knowingly obtain, possess, or use a controlled substance in violation of Section 2925.11(A) of the Ohio Revised Code contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio. The drug involved in the violation is cocaine or a compound, mixture, or substance containing cocaine."

Accordingly, Wells admitted that she knowingly possessed cocaine.

{¶8} In *State v. Hodge*, this Court held, in relevant part, as follows:

> "[Defendant] argues that the evidence was insufficient to convict him pursuant to R.C. *** 2925.11(A). However, as [Defendant] pled no contest to the indictment, he is now precluded from challenging the factual merits of the underlying charges. The state fulfilled its obligations by alleging sufficient facts to charge a violation for R.C. *** 2925.11(A). By pleading no contest, [Defendant] admitted the truth of the allegations set forth in the indictment. Accordingly, [his] assignment of error is without merit." (Internal citations omitted.) *State v. Hodge* (Feb. 20, 2002), 9th Dist. No. 01CA007913, at *2.

Here, as in *Hodge*, Wells' indictment alleges sufficient facts to charge a violation of R.C. 2925.11(A). Wells does not challenge the validity of her no contest plea. Instead, she argues that the State failed to prove her conviction. Because Wells pleaded no contest to an indictment sufficient to charge a violation of R.C. 2925.11(A), however, her argument lacks merit. Id. See, also, Crim.R. 11(C)(2)(c) (noting that defendant must be informed that no contest plea waives

defendant's right to require the State to prove its case beyond a reasonable doubt). As such, Wells' sole assignment of error is overruled.

III

{¶9} Wells' sole assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHTMORE
FOR THE COURT

CARR, J.
MOORE, P. J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.