[Cite as *State v. Little*, 2010-Ohio-101.]

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

STATE OF OHIO	C. A. No. 09CA009539
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 07CR074147
TERRY L. LITTLE	
Appellant	

DECISION AND JOURNAL ENTRY

Dated: January 19, 2010

BELFANCE, Judge.

{¶1} Defendant-Appellant Terry Little appeals his drug-related convictions in the Lorain County Court of Common Pleas. For reasons set forth below, we affirm.

FACTS

{¶2} On the evening of July 30, 2007, Officer Orlando Perez of the Lorain Police Department received a "serious" call for assistance in locating "persons of interest[,]" including a "thin black male, young, wearing dark clothes and long shorts[.]" Officer Perez observed an individual matching the description and ordered the man to the ground and put handcuffs on him. The man was compliant and stated that his name was Terry Little. Officer Perez ran a warrant check and discovered Little had an outstanding warrant for failure to appear in court. Officer Perez then arrested and searched Little. During the search, Officer Perez found a large clear plastic bag containing crack cocaine in Little's left rear pants pocket.

{¶3} As a result, Little was charged with one count of trafficking in drugs, a first-degree felony in violation of R.C. 2925.03(A)(2), one count of possession of drugs, a first-degree felony in violation of R.C. 2925.11(A), and one count of possession of drug paraphernalia, a fourth-degree misdemeanor in violation of R.C. 2925.14(C)(1). A jury found Little guilty of the offenses, and he was sentenced to a total of six years in prison. The trial court did not sentence Little on the possession offense, concluding that it was allied with the trafficking offense. Little has timely appealed, raising one assignment of error arguing that his convictions were based on insufficient evidence and against the manifest weight of the evidence.

SUFFICIENCY OF THE EVIDENCE

{¶4} Little alleges that the verdict in the case was not based on sufficient evidence. Specifically, Little argues that the State failed to prove beyond a reasonable doubt that Little knowingly possessed the cocaine, and thus failed to prove that Little was guilty of either trafficking or possession of cocaine. Little provides no argument in his brief with respect to the drug paraphernalia conviction, and as such we will not examine that conviction with respect to either Little's sufficiency or manifest weight arguments. See App.R. 16(A)(7).

{¶5} When assessing the sufficiency of the evidence, this Court examines the evidence "'to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.'" *State v. Flynn*, 9th Dist. No. 06CA0096-M, 2007-Ohio-6210, at ¶8, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. In reviewing challenges to sufficiency, we must view the evidence in a light most favorable to the prosecution. *State v. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶5, citing *Jenks*, 61 Ohio St.3d at 279.

{¶6} With respect to the offense of trafficking, R.C. 2925.03(A)(2) provides that "[n]o person shall knowingly * * * [p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person." "Cocaine and its derivative, crack, are both controlled substances." *State v. Forney*, 9th Dist. No. 24361, 2009-Ohio-2999, at ¶7. "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). Pursuant to R.C. 2925.03(C)(4)(f), a violation of R.C. 2925.03(A)(2) is a first-degree felony if the amount of the crack cocaine equals or exceeds twenty-five grams but is less than one hundred grams.

{¶7} The statute prohibiting the possession of drugs provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance." R.C. 2925.11(A). Possess "means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). Pursuant to R.C. 2925.11(C)(4)(e), a violation of R.C. 2925.11(A) is a first-degree felony if the amount of crack cocaine equals or exceeds twenty-five grams but is less than one hundred grams.

{¶8} Initially we note that while the jury found Little guilty of both trafficking and possession, the trial court only sentenced Little on the trafficking offense, as it concluded the offenses were allied. Here, "trafficking in a controlled substance under R.C. 2925.03(A)(2) and possession of that same controlled substance under R.C. 2925.11(A) are allied offenses of similar import because commission of the first offense *necessarily* results in commission of the second."

(Emphasis in original.) *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, at ¶30. Thus, under the facts of this case, if the State presented sufficient evidence to support a guilty verdict for trafficking, the State likewise presented sufficient evidence to support a guilty verdict for possession.

{¶9} Officer Perez testified that when he initially stopped Little, Little was calm and compliant. After discovering that Little had an outstanding warrant, Officer Perez arrested and searched Little. In Little's left rear pants pocket, Officer Perez discovered a large, clear plastic bag containing multiple pieces of a white, rocky substance. Immediately after Officer Perez pulled out the bag, Little screamed, "That's not mine. I am just holding it for someone." Little also began "to sweat profusely." Officer Perez stated that he "never [saw] sweat like that before, going from calm, relaxed to sweating that much. It was almost as though he ran a marathon so much sweat came from his head and forehead area." Officer Joshua McCoy arrived at the scene just after Officer Perez removed the bag from Little's pants. Officer McCoy field tested the white, rocky substance in the bag and it tested positive for cocaine.

{¶10} Jeffrey J. Houser, a forensic scientist of twenty years employed by the Ohio Bureau of Criminal Identification and Investigation also testified. Houser tested the evidence collected by the police and determined it to be crack cocaine. Houser also provided more specific testimony with respect to how the crack cocaine was packaged within the one bag. He testified that he received as evidence a large, clear plastic bag. Inside the bag were six knotted smaller bags each containing a small amount of crack cocaine which totaled 1.6 grams in the aggregate and a separate 42.6 gram piece of crack cocaine.

{¶11} Detective Tom Nimon, a narcotics detective with sixteen years of experience with the narcotics division of the Lorain Police Department also testified. Detective Nimon stated

that when preparing drugs for sale, the offenders "[g]enerally * * * take a certain amount * * *and they put into a plastic bag, usually a Ziploc baggie, into the corner. * * * And then at that point they'll twist it around and tie it in a knot, and that's how they sell it." He further provided "I can see in this bag right here, there's several of those individual packages, here in the evidence bag, that were obviously used to contain a small amount of cocaine." Detective Nimon also indicated that the amount in each of the six knotted bags was consistent with the amount an individual conducting street-level drug transactions would have to sell. He further opined that the bulk value of the crack cocaine would be about $1,500 to $2,000 and that the street value would be up to $10,000.

{¶12} Based upon the foregoing, we can only conclude that the State presented sufficient evidence, if believed, to establish beyond a reasonable doubt that Little engaged in both trafficking and possession.

{¶13} Viewing the evidence in a light most favorable to the State, there is sufficient circumstantial evidence to establish that Little both knowingly possessed crack cocaine and knowingly prepared crack cocaine for shipment or distribution or transported crack cocaine and "[knew] or ha[d] reasonable cause to believe that the [crack cocaine] [wa]s intended for sale or resale by [Little] or another person." R.C. 2925.03(A)(2). It is clear that Little possessed the crack cocaine. The drugs were found in Little's pants pockets and were clearly under his control. R.C. 2925.01(K).

{¶14} In support of his argument that the State did not present sufficient evidence that Little knowingly possessed the cocaine, Little contends that when Officer Perez retrieved the bag, he immediately disavowed ownership of the bag and never said anything that would indicate that he knew of the contents of the bag. In essence, Little contends his disavowal of

ownership required the jury to infer that Little did not know of the contents of the bag. However, we conclude that Little's disavowal provided circumstantial evidence that Little knowingly possessed the cocaine. Right after Officer Perez found the drugs on Little, Little yelled, "That's not mine. I am just holding it for someone." This statement supports the reasonable inference that Little knew that he possessed contraband given that if he had no knowledge of what he possessed, it would be unlikely that he would feel the need to instantly shout out that the plastic bag was not his.

{¶15} Little's statement coupled with his physical reaction upon Officer Perez discovering the crack cocaine provided further evidence of Little's knowledge. Prior to finding the bag of crack cocaine, Little was calm and compliant. Immediately after Officer Perez found the drugs, Little began to "sweat profusely[,]" like a runner in a marathon. Such a strong reaction to the officer finding drugs on Little's person provided additional circumstantial evidence of Little's knowledge of the circumstances. Although Little contends that different conclusions are warranted from the evidence, we cannot conclude that there was insufficient evidence that Little knowingly possessed crack cocaine. Furthermore, as there was sufficient evidence that Little knowingly possessed crack cocaine, it was reasonable for the jury to conclude that Little knowingly transported the same. R.C. 2925.03(A)(2).

{¶16} Detective Nimon's testimony, along with the presentation of the crack cocaine and the packaging to the jury, provided sufficient evidence that Little had reasonable cause to believe that the drugs were intended for sale. Id. Detective Nimon opined that the amounts in the six little bags contained in the large bag were consistent with amounts sold in street-level transactions, and that the drugs were packaged in a way typical of drugs packaged for sale. See, e.g., *State v. Vactor*, 9th Dist. No. 02CA008068, 2003-Ohio-7195, at ¶31 (sufficient evidence of

trafficking presented when officers testified that defendant possessed one large bag containing twenty-one small bags of marijuana, which indicated to the officers that the drugs were packaged for resale). Moreover, the presence of the large, 42.6 gram piece of crack cocaine in the same bag as the six small pieces pre-packaged in a manner consistent with drugs packaged for sale, allows for the reasonable inference that the large piece was used to create the small packages. Based upon the drugs' appearance and Detective Nimon's testimony describing the significance of it, there was sufficient evidence presented that Little had "reasonable cause to believe that the [crack cocaine] [wa]s intended for sale or resale by [Little] or another person." R.C. 2925.03(A)(2).

{¶17} Houser, the forensic scientist, testified that the large piece of crack cocaine weighed 42.6 grams and that the smaller pieces contained in the six knotted bags totaled 1.6 grams; thus, the State established that the amount of crack cocaine Little possessed was sufficient to fall within the range for a first-degree felony. R.C. 2925.03(C)(4)(f). Thus, the State presented sufficient evidence to support a finding of guilt for both trafficking and possession.

MANIFEST WEIGHT

{¶18} Little next argues that the jury verdicts are against the manifest weight of the evidence. Specifically, Little argues that the jury's conclusion that Little knowingly possessed crack cocaine is against the manifest weight of the evidence and thus, Little could be found guilty of neither trafficking nor possession of crack cocaine. Little provides no argument in his brief with respect to the drug paraphernalia conviction, and as such we will not examine that conviction. See App.R. 16(A)(7).

{¶19} When determining whether a verdict is supported by the manifest weight of the evidence,

> "'an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving 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.'" *Cepec* at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke this discretionary power in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340.

{¶20} We cannot conclude that the jury lost its way. *Cepec* at ¶6, quoting *Otten*, 33 Ohio App.3d at 340. After reviewing the record, we believe the evidence supports the jury's verdict and does not weigh heavily in Little's favor. *Flynn* at ¶9. Immediately after Officer Perez pulled the bag containing the drugs from Little's pants pocket, Little screamed, "That's not mine. I am just holding it for someone." While there is an argument that this evidence taken alone *could* possibly provide support for Little's argument that he did not know that the clear plastic bag contained drugs, a jury could also reasonably conclude that Little knew that he was in possession of a controlled substance and was attempting to mitigate the consequences of its discovery. Further, the jury could also reasonably infer from his accompanying physical reaction of sweating profusely that he knew that the clear plastic bag contained illegal drugs, especially considering that Little was not perspiring prior to Officer Perez's search. Little's immediate verbal and physical response to the discovery of the drugs provides circumstantial evidence of Little's knowledge of what he possessed, and thus, of what he was transporting. Detective Nimon's testimony that the packaging of the drugs was consistent with the packaging used in street-level transactions supports the conclusion that, if nothing else, Little transported a

controlled substance, i.e. crack cocaine, packaged for sale or resale. R.C. 2925.03(A)(2). R.C. 2925.03(A)(2) does not require that the offender actually sell the controlled substance. Further, the presence of the substantially larger piece of crack cocaine in the same bag as the six knotted bags containing crack cocaine in amounts consistent with that used in street-level transactions allows for the reasonable inference that the large piece was used to make the small packages for sale. The jury had the opportunity to view the physical evidence and to consider Detective Nimon's testimony. Based upon it, the jury could reasonably find that Little had "reasonable cause to believe" that the crack cocaine was intended for sale. R.C. 2925.03(A)(2). "While inferences cannot be based on inferences, a number of conclusions can result from the same set of facts." *Avon Lake v. Charles*, 9th Dist. No. 07CA009117, 2008-Ohio-998 at ¶23. "The fact that the State relied heavily upon circumstantial evidence to prove [Little's] guilt does not weigh against his conviction[]." *State v. Patel*, 9th Dist. No. 24030, 2008-Ohio-4693, at ¶54.

{¶21} Moreover, here the trial court determined that the offense of trafficking was allied with the offense of possession, and Little was not sentenced for the offense of possession. "[T]rafficking in a controlled substance under R.C. 2925.03(A)(2) and possession of that same controlled substance under R.C. 2925.11(A) are allied offenses of similar import because commission of the first offense *necessarily* results in commission of the second." (Emphasis in original.) *Cabrales* at ¶30. Thus, as the jury verdict finding Little guilty of trafficking was not against the manifest weight of the evidence, neither was its verdict for possession of crack cocaine.

CONCLUSION

{¶22} In light of the foregoing, we overrule Little's assignment of error and affirm the

judgment of the Lorain County Court of Common Pleas.

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.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
DICKINSON, 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.